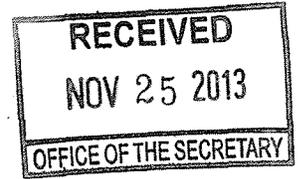


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15581

In the matter of:

TODD NEWMAN,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR
SUMMARY DISPOSITION AGAINST RESPONDENT TODD NEWMAN**

Upon the accompanying memorandum of points and authorities and papers filed in support hereof, the Division of Enforcement respectfully moves for summary disposition pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice against Respondent Todd Newman.

Dated: New York, NY
November 22, 2013

Respectfully submitted,

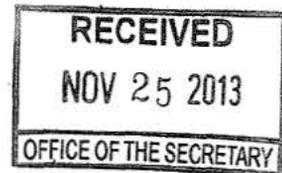
DIVISION OF ENFORCEMENT

By:

Daniel R. Marcus
Valerie Szczepanik
Matthew Watkins

Securities and Exchange Commission
New York Regional Office
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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15581

In the matter of:

TODD NEWMAN,

Respondent.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE
DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT TODD NEWMAN

DIVISION OF ENFORCEMENT
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Dated: November 22, 2013

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The Division of Enforcement moves, pursuant to Rule 250 of the Commission's Rules of Practice, for summary disposition of the claims in the Order Instituting Proceedings ("OIP") in this matter, brought under Section 203(f) of the Investment Advisers Act of 1934 ("Advisers Act") against Respondent Todd Newman, and respectfully requests that this Court issue an order barring Newman from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (hereinafter a "collateral industry bar"). In support of its motion, the Division respectfully submits this memorandum of law.

PRELIMINARY STATEMENT

In December 2012, after a four-week criminal trial, Newman was found guilty of one count of conspiracy to commit securities fraud and four counts of securities fraud based on his participation in an insider trading scheme that netted millions of dollars in profits for the hedge fund where Newman worked as a portfolio manager. On October 4, 2013, Judge Harold Baer of the U.S. District Court for the Southern District of New York issued a final judgment against Newman in a parallel civil action brought by the Commission based on the same insider trading conduct.

Because Newman's conduct was egregious and intentional, and because Newman has never acknowledged his misconduct or indicated any willingness to refrain from future wrongdoing, this Court should impose a collateral industry bar against him.

STATEMENT OF FACTS

The Criminal Case Against Newman

In January 2012, Newman was charged with one count of conspiracy to commit securities fraud and three counts of securities fraud in violation of Section 10(b) of the

Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 in *U.S. v. Newman et al.*, S2:12-cr-121 (RJS).¹ The evidence adduced during the criminal trial established that while serving as a portfolio manager at Diamondback Capital Management, LLC (“Diamondback”), Newman participated in an insider trading scheme along with a cohort of corrupt analysts at various hedge funds and investment firms who exchanged material, nonpublic information obtained from employees of publicly traded technology companies. The analysts provided the inside information they obtained to their portfolio managers—including Newman—who, in turn, used that information to trade in securities. The trial focused largely on tips from insiders at Dell, Inc. (“Dell”) and NVIDIA Corporation (“Nvidia”), who breached duties they owed to their employers by disclosing their companies’ confidential earnings numbers before that information was publicly released. Based on this material nonpublic information, Newman executed trades in Dell and Nvidia securities, earning approximately \$4 million in illicit profits for the funds managed by Diamondback.

On December 17, 2012, Newman was convicted of all counts. On May 9, 2013, a judgment in the criminal case was entered against Newman. *See* Decl. Ex. 2. Newman was sentenced to a prison term of 54 months followed by one year of supervised release. He was also ordered to pay a fine of \$1 million and \$737,724 in criminal forfeiture. Newman is appealing his conviction.

¹ The U.S. Attorney’s Office for the Southern District of New York later filed a Superseding Indictment that added a fourth securities fraud charge against Newman. That Superseding Indictment is attached as Exhibit 1 to the Declaration of Daniel R. Marcus dated November 22, 2013 (“Decl.”).

The Commission's Civil Injunctive Action Against Newman

On January 18, 2012, the Commission filed its complaint in *Securities and Exchange Commission v. Spyridon Adondakis et al.*, 12 Civ. 0409 (S.D.N.Y.). See Decl. Ex. 3. The defendants included, *inter alia*, Newman, Diamondback, and Jesse Tortora, a research analyst at Diamondback who reported to Newman.

With respect to Newman, the Complaint alleged that, beginning in 2008, Newman received material nonpublic information from Tortora regarding the securities of Dell and Nvidia, and that Newman knew, recklessly disregarded, or should have known, that the material nonpublic information he received from Tortora had been disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence. The Complaint sought to hold Newman liable for insider trading because he directly or indirectly caused Diamondback to place trades based on the material nonpublic information he received from Tortora.

On October 4, 2013, a final judgment was entered against Newman, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Decl. Ex. 4. The Court also found that Newman may be held liable for disgorgement, prejudgment interest and civil penalties (based on a motion the Commission may file at a later date).

The OIP Against Newman

On October 21, 2013, the Commission issued the OIP in this matter, and Newman was served with the OIP shortly thereafter. During a prehearing conference on November 1, 2013, the Court granted the Division's request for leave to file this motion for summary disposition, and waived the requirement that Newman file an Answer to the OIP.

ARGUMENT

I. SUMMARY DISPOSITION IS APPROPRIATE

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. *See* 17 C.F.R. § 201.250(a). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. 17 C.F.R. § 201.250(b).

The Commission has repeatedly upheld use of the summary disposition procedure in cases such as this one where the respondent has been enjoined and/or convicted and the sole determination concerns the appropriate sanction. *See In re Jeffrey L. Gibson*, 2008 SEC LEXIS 236 (Feb. 4, 2008). The facts underlying a criminal conviction are immune from attack in a follow-on administrative proceeding. *See In re Ted Harold Westerfield*, 1999 SEC LEXIS 433, at *16 n.22 (Mar. 1, 1999) (citing cases). The Commission does not permit a respondent to relitigate issues that were addressed in a previous proceeding against the respondent, nor does the pendency of an appeal preclude the Commission from action based on an injunction. *See In re James E. Franklin*, 2007 SEC LEXIS 2420 (Oct. 12, 2007) at *12.

II. NEWMAN SHOULD BE BARRED FROM ASSOCIATION WITH ANY INVESTMENT ADVISER, BROKER, DEALER, MUNICIPAL SECURITIES DEALER, MUNICIPAL ADVISOR, TRANSFER AGENT, OR NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION

Under Section 203(f) of the Advisers Act, the Commission has statutory authority to impose a collateral industry bar if it finds that it is in the public interest to do so, and finds

that a person has either been convicted of any felony or misdemeanor involving the purchase or sale of securities or been enjoined from engaging in conduct in connection with the purchase or sale of a security, and, at the time of the misconduct underlying the conviction or injunction, was associated with an investment adviser.

A. Newman Has Been Convicted and Enjoined and at the Time of His Illegal Conduct Was Associated With an Investment Adviser

The judgment against Newman in the criminal case was entered on May 9, 2013. *See* Decl. Ex. 2. The Final Judgment permanently enjoining Newman was entered on October 4, 2013. *See* Decl. Ex. 4. During the period of his illegal conduct, Newman was employed as a portfolio manager at Diamondback, a registered investment adviser. *See* Decl. Ex. 5 at ¶ 4; Ex. 6.

As Newman has been convicted and enjoined, and the record clearly shows that Newman was associated with an investment adviser at the time of the misconduct, the only remaining issue is the appropriate sanction.

B. The Public Interest Requires a Collateral Industry Bar Against Newman

A collateral industry bar should be imposed against Newman. The criminal charges of which Newman was convicted confirm the necessity of a permanent bar to promote the public interest. *See In re Jerry W. Anderson and Robert M. Kerns*, 2000 SEC LEXIS 1092, at *12-14 (May 31, 2000) (bar was in the public interest where conduct was egregious and committed with a “high degree of scienter”).

To determine whether sanctions under Section 203(f) of the Advisers Act are appropriate, the Commission considers six factors: (i) the egregiousness of respondent’s actions; (ii) the isolated or recurrent nature of the infractions; (iii) the degree of scienter

involved; (iv) the sincerity of the respondent's assurances against future violations; (v) the respondent's recognition of the wrongful nature of his conduct; and (vi) the likelihood that respondent's occupation will present opportunities for future violations. No one factor is controlling. *In re Kent D. Nelson*, 2009 SEC LEXIS 440, at *10 (Feb. 24, 2009) (citing to *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)). In light of the record in this matter, it is clear that all of these factors weigh in favor of imposing a collateral industry bar against Newman.

1. Newman's Actions Were Egregious, Intentional and Repeated

The criminal charges against Newman – and upon which he was convicted on all counts – showed that Newman's insider trading was egregious and involved a high degree of scienter. During 2008 and 2009, Newman received material nonpublic information regarding Dell – including quarterly earnings information – from Tortora. Newman knew that Tortora had received that information from Sandeep Goyal, an analyst at the investment advisory firm Neuberger Berman who previously worked at Dell, and that Goyal had obtained the information from a current Dell employee. Newman used the Dell inside information to trade Dell securities on behalf of hedge funds managed by Diamondback, reaping approximately \$3.8 million in profits for those funds during 2008. *See* Decl. Ex. 1 ¶¶ 16, 19. In exchange for Goyal's information regarding Dell, Newman arranged for Diamondback to direct soft dollar payments² totaling at least \$175,000 to a

² "Soft dollars" are created when an investment firm causes its trading activity to be directed through a designated broker-dealer, and, in return, the broker-dealer credits the investment firm with a portion of the commissions or fees from the executed trading activity. These credits can then be used to pay for goods and services consumed by the investment firm, such as third-party research. The investment firm can direct the broker-dealer to pay a third-party research consultant directly (thereby utilizing the soft dollar credits it has accumulated with the broker-dealer).

brokerage account maintained by Goyal's wife (even though Goyal's wife never performed any services for Diamondback that would warrant soft-dollar payments by Diamondback).

See id. ¶ 14.

Newman also traded Nvidia securities based on material nonpublic information that he knew to have been illegally obtained from a company insider. The Nvidia information was first passed to Danny Kuo, a hedge fund analyst and friend of the Nvidia employee, and then to Tortora, Newman's analyst at Diamondback. *See id.* ¶¶ 22-24. In April 2009, minutes after having received information indicating that the company would report a quarterly gross profit margin that was substantially lower than analysts' then-current consensus, Newman initiated a short position in Nvidia stock. After that information was publicly announced by the company, Nvidia's share price dropped more than ten percent and the Diamondback portfolio managed by Newman reaped profits of approximately \$73,000. *See id.* ¶ 25; Ex. 3 ¶¶ 104, 109-11.

In addition to being egregious and intentional, Newman's illegal conduct was repeated; indeed, it occurred on at least four separate occasions from least May 2008 through May 2009. *See Decl Ex. 1* ¶¶ 32, 33.

2. Newman Has Offered No Assurance Against Future Violations and He Continues to Deny Any Wrongdoing

Newman's failure to accept the wrongful nature of his conduct and to give any assurance against future misconduct also supports the imposition of a collateral industry bar against him. Newman refuses to acknowledge any wrongdoing and is appealing his criminal conviction. At no time has Newman indicated any remorse for his actions, nor has he offered any assurance that he will not engage in future violations. Newman's failure to recognize the wrongfulness of his conduct presents a significant risk that, given

the opportunity, he would commit further misconduct in the future, and further underscores the need for a bar. *In re Michael J. Markowski*, 2001 SEC LEXIS 502, at *17 (Mar. 20, 2001).

CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted, and that an order issue permanently barring Newman from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

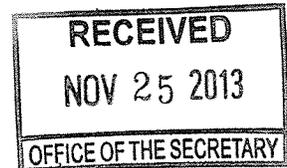
Dated: November 22, 2013.

Respectfully submitted,
DIVISION OF ENFORCEMENT



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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15581

In the matter of:

TODD NEWMAN,

Respondent.

DECLARATION OF DANIEL R. MARCUS

I, Daniel R. Marcus, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over 18 years old and a member of the bar of the State of New York.
2. I am employed as a Senior Counsel in the Division of Enforcement ("Division") at the New York Regional Office of the Securities and Exchange Commission ("Commission"). I make this declaration in support the Division's Motion for Summary Disposition against Respondent Todd Newman.

3. Attached as exhibits to this Declaration are true and correct copies of the following documents:

Exhibit 1: the Superseding Indictment in *U.S. v. Todd Newman et al.*, S2 Cr 121 (RJS) (S.D.N.Y.), filed on August 28, 2012.

Exhibit 2: the Judgment in a Criminal Case as to Defendant Todd Newman, entered May 9, 2013, in *U.S. v. Todd Newman et al.*, S2 Cr 121 (RJS) (S.D.N.Y.).

Exhibit 3: the Complaint in *Securities and Exchange Commission v. Spyridon Adondakis et al.*, 12 Civ. 0409 (S.D.N.Y.).

Exhibit 4: the Final Judgment against Todd Newman, entered on October 4, 2013, by the U.S. District Court for the Southern District of New York in *Securities and Exchange Commission v. Spyridon Adondakis et al.*, 12 Civ. 0409 (S.D.N.Y.).

Exhibit 5: Defendant Todd Newman's Answer in *Securities and Exchange Commission v. Spyridon Adondakis et al.*, 12 Civ. 0409 (S.D.N.Y.), filed March 26, 2012.

Exhibit 6: the Form ADV filed by Diamondback Capital Management, LLC on March 18, 2008.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 22, 2013
New York, New York

A handwritten signature in black ink, appearing to read 'D. Marcus', written over a horizontal line.

Daniel R. Marcus

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA :

-v.- :

SUPERSEDING
INDICTMENT

TODD NEWMAN, :
ANTHONY CHIASSON, and :
JON HORVATH, :

S2 12 Cr. 121 (RJS)

Defendants. :

----- x

COUNT ONE

(Conspiracy to Commit Securities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. At all times relevant to this Indictment, TODD NEWMAN, the defendant, was a portfolio manager at a hedge fund located in Stamford, Connecticut ("Hedge Fund A"). At all times relevant to this Indictment, Jesse Tortora ("Tortora"), a coconspirator not named as a defendant herein, was employed as an analyst at Hedge Fund A.

2. At all times relevant to this Indictment, ANTHONY CHIASSON, the defendant, was one of the founders of, and a portfolio manager at, a hedge fund located in New York, New York ("Hedge Fund B"). At all times relevant to this Indictment, Spyridon Adondakis, a/k/a "Sam Adondakis" ("Adondakis"), a coconspirator not named as a defendant herein, was employed as an analyst at Hedge Fund B.

3. At all times relevant to this Indictment, JON HORVATH, the defendant, was employed as an analyst at a hedge fund located in New York, New York ("Hedge Fund C").

4. At all times relevant to this Indictment, Dell, Inc. ("Dell"), a public company whose stock was traded on the Nasdaq Stock Market, produced personal computers and provided technology services around the world. Further, at all times relevant to this Indictment, Dell's policies prohibited the unauthorized disclosure of Dell's confidential information.

5. At all times relevant to this Indictment, NVIDIA Corporation ("NVIDIA"), a public company whose stock was traded on the Nasdaq Stock Market, produced, among other things, graphics processors. Further, at all times relevant to this Indictment, NVIDIA's policies prohibited the unauthorized disclosure of NVIDIA's confidential information.

The Insider Trading Scheme

6. From at least in or about late 2007 through in or about 2009, JON HORVATH, the defendant, along with Tortora, Adondakis, and others known and unknown, were analysts who worked at hedge funds and investment firms in New York, New York and elsewhere (the "Analyst Coconspirators"). The Analyst Coconspirators exchanged with each other material, nonpublic information ("Inside Information") obtained directly and indirectly from employees of certain publicly traded technology

companies ("Technology Companies"). The Analyst Coconspirators, in turn, provided the Inside Information they obtained from each other and from their own sources to the portfolio managers for whom they worked at their respective hedge funds and investment firms (the "Portfolio Manager Coconspirators"). The Portfolio Manager Coconspirators, including TODD NEWMAN and ANTHONY CHIASSON, the defendants, in turn, executed securities transactions based in whole or in part on the Inside Information the Analyst Coconspirators provided to them.

7. The Inside Information obtained by the Analyst Coconspirators, including JON HORVATH, the defendant, and passed to the Portfolio Manager Coconspirators, including TODD NEWMAN and ANTHONY CHIASSON, the defendants, and to others known and unknown, included information relating to the Technology Companies' earnings, revenues, gross margins, and other confidential and material financial information of the Technology Companies.

8. The Inside Information obtained by the Analyst Coconspirators, including JON HORVATH, the defendant, and passed to the Portfolio Manager Coconspirators, including TODD NEWMAN and ANTHONY CHIASSON, the defendants, and to others known and unknown was obtained in violation of: (i) fiduciary and other duties of trust and confidence owed by the employees of the Technology Companies to their employers; (ii) expectations of confidentiality held by the Technology Companies; (iii) written policies of the

Technology Companies regarding the use and safekeeping of confidential business information; and (iv) agreements between the Technology Companies and their employees to maintain information in confidence.

9. Specifically, in furtherance of the conspiracy, Tortora passed to TODD NEWMAN, the defendant, Inside Information pertaining to Technology Companies that Tortora had obtained from the Analyst Coconspirators and other sources. NEWMAN executed and caused others to execute transactions in the securities of certain Technology Companies based in whole or in part on the Inside Information, earning substantial sums in unlawful profits or illegally avoiding losses for the benefit of Hedge Fund A.

10. In furtherance of the conspiracy, Adondakis passed to ANTHONY CHIASSON, the defendant, Inside Information pertaining to Technology Companies that Adondakis had obtained from the Analyst Coconspirators and other sources. CHIASSON, either alone or together with one or more coconspirators at Hedge Fund B (the "Hedge Fund B Coconspirators"), executed and caused others to execute transactions in the securities of certain Technology Companies based in whole or in part on the Inside Information, earning substantial sums in unlawful profits or illegally avoiding losses for the benefit of Hedge Fund B.

11. In furtherance of the conspiracy, JON HORVATH, the defendant, passed the Inside Information he obtained from the

Analyst Coconspirators and other sources to the portfolio manager for whom he worked ("Portfolio Manager 1"), who in turn executed and caused others to execute transactions in the securities of certain Technology Companies based in whole or in part on the Inside Information, earning substantial sums in unlawful profits or illegally avoiding losses for the benefit of Hedge Fund C.

The Dell Inside Information

12. From in or about 2008 through in or about 2009, in advance of Dell's quarterly earnings announcements, Tortora provided Inside Information regarding Dell's financial condition, including Dell's gross margins (the "Dell Inside Information") to TODD NEWMAN and JON HORVATH, the defendants, and to Adondakis. Tortora obtained the Dell Inside Information from Sandeep Goyal, a/k/a "Sandy Goyal" ("Goyal"), a coconspirator not named as a defendant herein. Goyal, in turn, obtained the Dell Inside Information from an employee at Dell (the "Dell Insider").

13. At certain times, the Dell Insider worked in Dell's investor relations department, and had access to confidential financial information concerning Dell's quarterly earnings announcements before it was publicly announced. The disclosure by the Dell Insider of the Dell Inside Information in advance of Dell's public earnings announcements violated Dell's policies and the Dell Insider's duties of trust and confidence owed to Dell.

14. Hedge Fund A paid Goyal for information, including the Dell Inside Information, through a purported consulting arrangement with another individual ("Individual 1"). In 2008, Individual 1 received three payments of \$18,750 pursuant to this purported consulting arrangement, and a separate \$100,000 payment in or about January 2009. TODD NEWMAN, the defendant, approved this consulting arrangement and the payments to Individual 1 described herein.

May 29, 2008 Earnings Announcement

15. In advance of Dell's May 29, 2008 quarterly earnings announcement, the Dell Insider provided to Goyal, who, in turn, provided to Tortora, Inside Information concerning Dell's financial results for the quarter ended May 2, 2008. That Inside Information indicated, among other things, that gross margins would be higher than market expectations.

16. Tortora passed this Dell Inside Information to TODD NEWMAN, the defendant, in advance of Dell's May 29, 2008 quarterly earnings announcement. NEWMAN executed or caused to be executed transactions in securities of Dell based in whole or in part on the Dell Inside Information, resulting in an illegal profit for Hedge Fund A of approximately \$1 million.

17. Tortora also provided the Dell Inside Information concerning Dell's May 29, 2008 quarterly earnings announcement to Adondakis. Adondakis, in turn, provided the Dell Inside

Information to ANTHONY CHIASSON, the defendant, in advance of Dell's May 29, 2008 earnings announcement. CHIASSON, either alone or together with one or more coconspirators at Hedge Fund B, executed or caused to be executed transactions in securities of Dell based in whole or in part on the Dell Inside Information, resulting in an illegal profit for Hedge Fund B of approximately \$4 million.

August 28, 2008 Earnings Announcement

18. On multiple occasions in advance of Dell's August 28, 2008 quarterly earnings announcement, the Dell Insider provided to Goyal, who, in turn, provided to Tortora, Inside Information concerning Dell's financial results for the quarter ended August 1, 2008. That Inside Information indicated, among other things, that gross margins would be materially lower than market expectations.

19. Tortora passed this Dell Inside Information concerning Dell's August 28, 2008 earnings announcement to TODD NEWMAN, the defendant, who executed or caused to be executed transactions in securities of Dell based in whole or in part on the Dell Inside Information, resulting in an illegal profit for Hedge Fund A of approximately \$2.8 million.

20. Tortora also provided the Dell Inside Information concerning Dell's August 28, 2008 quarterly earnings announcement to Adondakis. Adondakis, in turn, provided the Dell Inside

Information to ANTHONY CHIASSON, the defendant. CHIASSON, either alone or together with one or more coconspirators at Hedge Fund B, executed or caused to be executed transactions in securities of Dell based in whole or in part on the Dell Inside Information, resulting in an illegal profit for Hedge Fund B of approximately \$53 million.

21. Tortora also provided the Dell Inside Information concerning Dell's August 28, 2008 quarterly earnings announcement to JON HORVATH, the defendant. HORVATH, in turn, provided the Dell Inside Information to Portfolio Manager 1. Portfolio Manager 1 executed or caused to be executed transactions in securities of Dell based in whole or in part on the Dell Inside Information, resulting in an illegal profit for Hedge Fund C of approximately \$1 million.

The NVIDIA Inside Information

22. At all times relevant to this Indictment, Danny Kuo, an Analyst Coconspirator not named as a defendant herein, was employed as an analyst at a wealth management company headquartered in Pasadena, California ("Investment Firm D"). In or about 2009, Kuo obtained Inside Information regarding NVIDIA's financial results, including NVIDIA's revenues and gross margins (the "NVIDIA Inside Information"); in advance of NVIDIA's quarterly earnings announcements. Kuo obtained the NVIDIA Inside Information from a friend ("Individual 2") who in turn obtained

the NVIDIA Inside Information from an employee at NVIDIA (the "NVIDIA Insider"). Kuo paid Individual 2 cash and other items of value in exchange for the NVIDIA Inside Information. Kuo passed this NVIDIA Inside Information to the portfolio manager at Investment Firm D for whom he worked ("Portfolio Manager 2") as well as to Tortora, Adondakis, and JON HORVATH, the defendant.

23. At certain times, the NVIDIA Insider worked in NVIDIA's finance department, and had access to confidential financial information concerning NVIDIA's quarterly earnings announcements before the information was publicly announced. The disclosure by the NVIDIA Insider of the NVIDIA Inside Information in advance of NVIDIA's public earnings announcements violated NVIDIA's policies and the NVIDIA Insider's duties of trust and confidence owed to NVIDIA.

May 7, 2009 Earnings Announcement

24. In advance of NVIDIA's May 7, 2009 quarterly earnings announcement, the NVIDIA Insider provided to Individual 2, who in turn provided to Kuo, Inside Information concerning NVIDIA's financial results for the quarter ended April 26, 2009. That Inside Information indicated, among other things, that gross margins would be lower than market expectations. Kuo provided this NVIDIA Inside Information to Portfolio Manager 2 as well as to Tortora, Adondakis, and JON HORVATH, the defendant.

25. Tortora, in turn, provided the NVIDIA Inside

Information to TODD NEWMAN, the defendant. NEWMAN executed or caused to be executed transactions in securities of NVIDIA in advance of NVIDIA's May 7, 2009 quarterly earnings announcement based in whole or in part on the NVIDIA Inside Information, resulting in an illegal profit for Hedge Fund A of at least \$48,000.

26. Adonakis, in turn, provided the NVIDIA Inside Information to ANTHONY CHIASSON, the defendant. CHIASSON executed or caused to be executed transactions in securities of NVIDIA in advance of NVIDIA's May 7, 2009 quarterly earnings announcement based in whole or in part on the NVIDIA Inside Information, resulting in an illegal profit for Hedge Fund B of approximately \$10 million.

27. JON HORVATH, the defendant, in turn provided the NVIDIA Inside Information to Portfolio Manager 1. Portfolio Manager 1 executed or caused to be executed transactions in securities of NVIDIA in advance of NVIDIA's May 7, 2009 quarterly earnings announcement based in whole or in part on the NVIDIA Inside Information, resulting in an illegal profit for Hedge Fund C of over \$400,000.

The Conspiracy

28. From in or about late 2007 through in or about 2009, in the Southern District of New York and elsewhere, TODD NEWMAN, ANTHONY CHIASSON, and JON HORVATH, the defendants, and

others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Section 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

Securities Fraud

29. It was a part and an object of the conspiracy that TODD NEWMAN, ANTHONY CHIASSON, and JON HORVATH, the defendants, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon any person, all in violation of Title 15, United States Code, Sections 78j(b)

and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

30. Among the means and methods by which TODD NEWMAN, ANTHONY CHIASSON, and JON HORVATH, the defendants, and others known and unknown, would and did carry out the conspiracy were the following:

a. The Analyst Coconspirators, including HORVATH, obtained Inside Information directly and indirectly from employees of public companies that had been disclosed by those employees in violation of fiduciary and other duties of trust and confidence that they owed to their employers.

b. The Analyst Coconspirators, including HORVATH, shared with each other Inside Information that they obtained directly or indirectly from public company employees.

c. The Analyst Coconspirators, including HORVATH, also provided the Inside Information they obtained directly or indirectly from public companies or from each other to their respective portfolio managers for the purpose of the portfolio managers' trading on that Inside Information. Thus, HORVATH provided the Inside Information that he obtained from both the Analyst Coconspirators and other sources to Portfolio Manager 1, Tortora provided the Inside Information that he obtained from both

the Analyst Coconspirators and other sources to NEWMAN, and Adondakis provided the Inside Information that he obtained from both the Analyst Coconspirators and other sources to CHIASSON.

d. NEWMAN executed and caused others to execute securities transactions for the benefit of Hedge Fund A in various Technology Companies based in whole or in part on the Inside Information provided by Tortora, knowing that the Inside Information had been disclosed by public company employees in violation of duties of trust and confidence owed to their employers.

e. CHIASSON, either alone or together with one or more coconspirators at Hedge Fund B, executed and caused others to execute securities transactions for the benefit of Hedge Fund B in various Technology Companies based in whole or in part on the Inside Information provided by Adondakis, knowing that the Inside Information had been disclosed by public company employees in violation of duties of trust and confidence owed to their employers.

Overt Acts

31. In furtherance of the conspiracy, and to effect the illegal object thereof, TODD NEWMAN, ANTHONY CHIASSON, and JON HORVATH, the defendants, and their coconspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about May 12, 2008, Adondakis called CHIASSON's office telephone line in New York, New York.

b. On or about May 16, 2008, Tortora and NEWMAN spoke by telephone.

c. On or about August 5, 2008, Tortora sent emails to NEWMAN, HORVATH, Kuo, and Adondakis containing certain of the Dell Inside Information.

d. On or about August 8, 2008, Adondakis discussed certain of the Dell Inside Information with CHIASSON in an office located in New York, New York.

e. On or about August 18, 2008, Tortora spoke with HORVATH by telephone.

f. On or about August 18, 2008, Tortora spoke to Kuo by telephone.

g. On or about August 25, 2008, HORVATH sent an email to Portfolio Manager 1 containing certain of the Dell Inside Information.

h. On or about August 27, 2008, CHIASSON participated in a telephone call routed through Hedge Fund B's office in New York, New York, with Adondakis and other coconspirators at Hedge Fund B in which certain of the Dell Inside Information was discussed.

i. On or about February 10, 2009, Kuo sent emails to Portfolio Manager 2, as well as to HORVATH, Tortora, and Adondakis containing Inside Information concerning NVIDIA.

j. On or about May 4, 2009, Kuo sent emails to Portfolio Manager 2, as well as to HORVATH, Tortora, and Adondakis containing Inside Information concerning NVIDIA.

k. On or about August 6, 2009, Kuo sent emails to Portfolio Manager 2, as well as to HORVATH, Tortora, and Adondakis, containing Inside Information concerning NVIDIA.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH FIVE

(Securities Fraud)

The Grand Jury further charges:

32. The allegations contained in paragraphs 1 through 27 and 30 through 31 are repeated and realleged as though fully set forth herein.

33. On or about the dates set forth below, in the Southern District of New York and elsewhere, TODD NEWMAN, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal

Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, NEWMAN executed and caused others to execute the securities transactions listed below based in whole or in part on material, nonpublic information:

COUNT	DATE	SECURITY	TRANSACTION
TWO	May 16, 2008	Dell, Inc.	purchase of 475,000 shares of common stock
THREE	August 5, 2008	Dell, Inc.	short sale of 180,000 shares of common stock
FOUR	August 15, 2008	Dell, Inc.	short sale of 350,000 shares of common stock
FIVE	April 27, 2009	NVIDIA Corporation	short sale of 375,000 shares of common stock

(Title 15, United States Code, Sections 78j(b) & 78ff;
 Title 17, Code of Federal Regulations, Sections 240.10b-5
 and 240.10b5-2; and Title 18, United States Code, Section 2.)

COUNTS SIX THROUGH TEN

(Securities Fraud)

The Grand Jury further charges:

34. The allegations contained in paragraphs 1 through 27 and 30 through 31 are repeated and realleged as though fully set forth herein.

35. On or about the dates set forth below, in the Southern District of New York and elsewhere, ANTHONY CHIASSON, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, CHIASSON executed and caused others to execute the securities transactions listed below based in whole or in part on material, nonpublic information:

COUNT	DATE	SECURITY	TRANSACTION
SIX	May 12, 2008	Dell, Inc.	purchase of 3,500 call option contracts
SEVEN	August 11, 2008	Dell, Inc.	short sale of 100,000 shares of common stock
EIGHT	August 18, 2008	Dell, Inc.	short sale of 700,000 shares of common stock
NINE	August 20, 2008	Dell, Inc.	purchase of 7,000 put option contracts
TEN	May 4, 2009	NVIDIA Corporation	short sale of 1,000,000 shares of common stock

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Sections 240.10b-5
and 240.10b5-2;and Title 18, United States Code, Section 2.)

COUNTS ELEVEN AND TWELVE

(Securities Fraud)

The Grand Jury further charges:

36. The allegations contained in paragraphs 1 through 27 and 30 through 31 are repeated and realleged as though fully set forth herein.

37. On or about the date set forth below, in the Southern District of New York and elsewhere, JON HORVATH, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal

Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, HORVATH provided material, nonpublic information to Portfolio Manager 1, who executed or caused others to execute the securities transactions listed below based in whole or in part on the information:

COUNT	DATE	SECURITY	TRANSACTION
ELEVEN	August 18, 2008	Dell, Inc.	short sale of at least 167,000 shares of common stock
TWELVE	May 5, 2009	NVIDIA Corporation	a swap transaction equivalent to a short sale of 160,000 shares of common stock

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; and Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

38. As a result of committing one or more of the foregoing securities fraud offenses alleged in Counts One through Twelve of this Indictment, TODD NEWMAN, ANTHONY CHIASSON, and JON HORVATH, the defendants, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and

Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the securities fraud offenses.

Substitute Assets Provision

39. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981; Title 28, United States Code, Section 2461; Title 18, United States Code, Sections 371 and 2; Title 15, United States Code, Sections 78j(b) and 78ff; and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.)



Preet Bharara
PREET BHARARA (MPA)
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

TODD NEWMAN,
ANTHONY CHIASSON, and
JON HORVATH,

Defendants.

SUPERSEDING
INDICTMENT

S2 12 Cr. 121 (RJS)

(18 U.S.C. §§ 2, 371; Title 15, United
States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations,
Sections 240.10b-5 and 240.10b5-2)

PREET BHARARA
United States Attorney.

A TRUE BILL



2

UNITED STATES DISTRICT COURT
Southern District of New York

UNITED STATES OF AMERICA
v.
TODD NEWMAN

)
) **JUDGMENT IN A CRIMINAL CASE**
)
)
) Case Number: 12 Cr. 121
)
) USM Number: 94251-038
)
) Stephen R. Fishbein & John A. Nathanson
) Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) _____
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) 1-5
after a plea of not guilty.

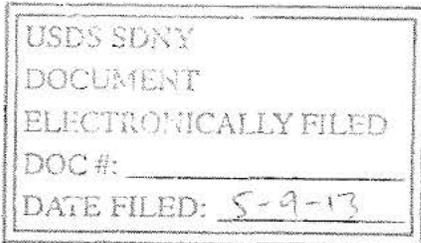
The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. 371	Conspiracy to Commit Securities Fraud	12/31/2009	1
15 U.S.C. 78j(b) & 78ff	Securities Fraud	5/16/2008	2
15 U.S.C. 78j(b) & 78ff	Securities Fraud	8/5/2008	3

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.



5/2/2013
Date of Imposition of Judgment

[Signature]
Signature of Judge

Richard J. Sullivan
Name of Judge

U.S. District Judge
Title of Judge

5/8/2013
Date

DEFENDANT: TODD NEWMAN
CASE NUMBER: 12 Cr. 121

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
15 U.S.C. 78j(b) & 78ff	Securities Fraud	8/15/2008	4
15 U.S.C. 78j(b) & 78ff	Securities Fraud	4/27/2009	5

DEFENDANT: TODD NEWMAN
CASE NUMBER: 12 Cr. 121

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
54 months

The court makes the following recommendations to the Bureau of Prisons:

That Defendant be housed at the satellite camp at FCP Devins so that he may be close to his friends and relatives, including his 12-year-old daughter.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

- at _____ a.m. p.m. on _____
- as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- before 2 p.m. on 7/8/2013
- as notified by the United States Marshal.
- as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TODD NEWMAN
CASE NUMBER: 12 Cr. 121

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
1 year

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: TODD NEWMAN
CASE NUMBER: 12 Cr. 121

ADDITIONAL SUPERVISED RELEASE TERMS

- 1) The Defendant shall provide the probation officer with access to any requested financial information.
- 2) The Defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.
- 3) The Defendant is to report to the nearest Probation Office within 24 of release from custody, or by the next business day if the Defendant is released on a weekend or holiday.
- 4) The Defendant shall be supervised in his district of residence.

DEFENDANT: TODD NEWMAN
 CASE NUMBER: 12 Cr. 121

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 500.00	\$ 1,000,000.00	\$

- The determination of restitution is deferred until 5/31/2013. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
--------	----	-------------	----	-------------

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: TODD NEWMAN
 CASE NUMBER: 12 Cr. 121

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
 Pursuant to a stipulation between the government and Defendant, Defendant shall deposit \$1,737,724 -- the amount equal to the sum of the criminal fine and forfeiture imposed on Defendant -- in the escrow account of Defendant's counsel, Shearman & Sterling LLP, pending resolution of his appeal.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:
 \$737,724

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

3

12 CIV 0409

George S. Canellos **JUDGE GARDEPHE**
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
3 World Financial Center, Suite 400
New York, NY 10281-1022
(212) 336-1100

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

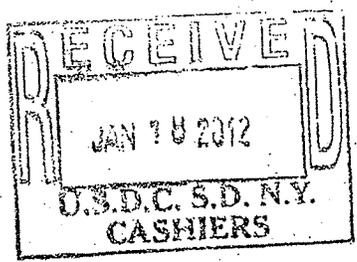
-against-

**SPYRIDON ADONDAKIS,
ANTHONY CHIASSON,
SANDEEP GOYAL,
JON HORVATH,
DANNY KUO,
TODD NEWMAN,
JESSE TORTORA,
DIAMONDBACK CAPITAL MANAGEMENT, LLC,
and
LEVEL GLOBAL INVESTORS, L.P.,**

Defendants.

COMPLAINT

ECF CASE



Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Spyridon "Sam" Adondakis ("Adondakis"), Anthony Chiasson ("Chiasson"), Sandeep "Sandy" Goyal ("Goyal"), Jon Horvath ("Horvath"), Danny Kuo ("Kuo"), Todd Newman ("Newman"), Jesse Tortora ("Tortora"), Diamondback Capital Management, LLC ("Diamondback") and Level Global Investors, L.P. ("Level Global"), (collectively, "Defendants"), alleges as follows:

SUMMARY

1. This case involves insider trading by members of a network of closely associated hedge fund traders who illegally obtained material nonpublic information concerning public companies Dell, Inc. ("Dell") and/or Nvidia Corporation ("Nvidia"), exchanged that information with others, and reaped massive profits from trading on that information.

Insider Trading in the Securities of Dell

2. During at least 2008, a Dell insider (the "Dell Insider") passed material nonpublic information regarding Dell to defendant Goyal, an analyst at Investment Adviser A who previously worked at Dell. This material nonpublic information included quarterly earnings information and other performance data regarding Dell that Goyal obtained in advance of Dell's quarterly earnings announcements.

3. Goyal, in turn, passed this material nonpublic information to defendant Tortora, who at the time was an analyst at the investment adviser firm, defendant Diamondback. At various times, Goyal informed Tortora that the material nonpublic information that Goyal was providing came from a source inside Dell.

4. Tortora passed the material nonpublic information that he received from Goyal to defendant Newman, the portfolio manager at Diamondback to whom Tortora reported, and informed Newman that the information had come from a source inside Dell. Newman used the inside information he received from Tortora to trade Dell securities on behalf of hedge funds managed by Diamondback, reaping approximately \$3.8 million in profits for those funds during 2008.

5. Tortora and Newman paid Goyal for providing material nonpublic information regarding Dell by arranging for Diamondback to direct soft dollar payments¹ totaling at least \$175,000 to a brokerage account in the name of a nominee of Goyal. These payments were arranged by Tortora and approved by Newman.

6. Tortora also passed the Dell inside information that he received from Goyal to at least three individuals at other investment adviser firms with whom Tortora regularly shared information: (i) defendant Adondakis, an analyst at defendant Level Global; (ii) defendant Horvath, an analyst at Hedge Fund A; and (iii) defendant Kuo, a vice-president and fund manager at Investment Adviser B.

7. After receiving the Dell information from Tortora, Adondakis provided the information to defendant Chiasson, one of Level Global's two founding partners. Adondakis informed Chiasson that the Dell information had originated from a source inside Dell. Chiasson caused Level Global's hedge funds to trade Dell securities based on the tips he received from Adondakis, thereby causing Level Global's hedge funds to reap profits totaling approximately \$57 million in 2008.

8. In addition, soon after Horvath received the Dell inside information from Tortora – in some instances just minutes after Tortora passed the information to Horvath – Horvath communicated with the portfolio manager at Hedge Fund A to whom he reported and the portfolio manager then executed trades in Dell securities that were

¹ “Soft dollars” are created when an investment firm causes its trading activity to be directed through a designated broker-dealer, and, in return, the broker-dealer credits the investment firm with a portion of the commissions or fees from the executed trading activity. These credits can then be used to pay for goods and services consumed by the investment firm, such as third-party research. The investment firm can direct the broker-dealer to pay a third-party research consultant directly (thereby utilizing the soft dollar credits it has accumulated with the broker-dealer).

consistent with the information that Tortora provided to Horvath. Those trades resulted in approximately \$1.4 million in profits for Hedge Fund A in 2008.

9. Finally, Kuo, upon receiving the Dell inside information from Tortora, directly or indirectly caused a hedge fund managed by Investment Adviser B to execute trades in Dell securities that were consistent with the information that Tortora provided, and which resulted in over \$180,000 in profits and losses avoided for Investment Adviser B's hedge fund in 2008.

Insider Trading in the Securities of Nvidia

10. In addition to engaging in insider trading in Dell securities, at least five of the seven individual defendants and both investment adviser firm defendants obtained material nonpublic information concerning the public company Nvidia, and traded on the basis of that information and/or passed the information on to others who traded.

11. During at least 2009, Kuo obtained material nonpublic information concerning Nvidia's calculation of its revenues, gross profit margins and other financial metrics prior to the company making these figures public in its quarterly earnings announcements. In addition to using this information for the benefit of his employer, Investment Adviser B, Kuo also passed the information to other investment professionals with whom he regularly shared information including Adondakis and Tortora.

12. After receiving the information from Kuo, Adondakis passed the information to his superior, Chiasson, who used the information to trade Nvidia securities on behalf of Level Global hedge funds. Similarly, Tortora passed the information to his superior, Newman, who used the information to trade Nvidia securities on behalf of Diamondback hedge funds.

13. In April and May 2009, for example, Kuo obtained and forwarded material nonpublic information concerning Nvidia's first quarter financial results in advance of the company's quarterly earnings announcement on May 7, 2009. Trading on the basis of that information, Level Global's hedge funds reaped profits and avoided losses of at least \$15.6 million, a hedge fund managed by Investment Adviser B reaped profits and avoided losses of at least \$90,000, and Diamondback's hedge funds reaped profits of at least \$73,000.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

14. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)]. The Commission seeks permanent injunctions against each of the defendants, enjoining them from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, and disgorgement of ill-gotten gains or losses avoided from the unlawful insider trading activity set forth in this Complaint, together with prejudgment interest. The Commission also seeks civil penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. The Commission seeks any other relief the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and

Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

16. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1, and 78aa]. Certain of the acts, practices, transactions, and courses of business alleged in this Complaint occurred within the Southern District of New York. Defendants Diamondback and Level Global have offices in New York, New York; defendants Tortora, Adondakis and Chiasson resided and worked in New York, New York at all times relevant to this action; defendant Horvath currently resides in New York, New York and worked in New York, New York at all times relevant to this action; and defendant Goyal works in New York, New York. Many of the communications described herein took place while at least one of the parties to the communication was physically located in New York, New York.

DEFENDANTS

17. **Adondakis**, age 40, resides in Santa Monica, California. From 2006 until 2010, Adondakis resided in New York, New York and worked as an analyst at Level Global. From 2002 to 2006, he worked as a research analyst at Prudential Equity Group ("Prudential") in San Francisco, California. Adondakis has held Series 7, 63, 65, 86 and 87 licenses.

18. **Chiasson**, age 38, resides in New York, New York. Chiasson is a founding partner at Level Global. During the relevant time period, he served as the firm's Director of Research and the Sector Head of the technology, media and telecommunications sector, and also had authority to execute trades for the hedge funds

managed by Level Global. Chiasson previously held Series 7 and 63 licenses, which he obtained while employed at Credit Suisse First Boston Corporation.

19. **Goyal**, age 39, resides in Princeton, New Jersey. Since July 2007, Goyal has worked as an analyst for Investment Adviser A. In 2006 and 2007, Goyal worked as a research analyst at Prudential in San Francisco, California. While at Prudential, he held Series 7, 63, and 87 licenses. Immediately prior to working at Prudential, Goyal worked as a manager of corporate planning at Dell for approximately three years.

20. **Horvath**, age 42, resides in New York, New York. During the relevant time period, Horvath was a technology research analyst at Hedge Fund A. Horvath previously held Series 7 and 63 licenses, which he obtained while employed at Lehman Brothers in San Francisco.

21. **Kuo**, age 36, resides in San Marino, California. Kuo has been a vice-president and fund manager at Investment Adviser B since 2008. Kuo previously held a Series 7 license, which he obtained while employed at Merrill Lynch in San Francisco, and a Series 63 license, which he obtained while employed at J.P. Morgan Securities, Inc.

22. **Newman**, age 47, resides in Needham, Massachusetts. Newman was a portfolio manager at Diamondback from March 2006 through January 2011. Newman previously held a Series 7 license which he obtained while employed at Merrill Lynch in New York, as well as a Series 63 license which he obtained while employed at Freedom Capital in Boston.

23. **Tortora**, age 34, resides in Pembroke Pines, Florida. From late 2007 until early 2010, Tortora worked as an analyst at Diamondback. Prior to working at Diamondback, Tortora was a research analyst at Prudential in San Francisco, California.

from 2004 to mid-2007. While at Prudential, Tortora held Series 7, 63, 86, and 87 licenses.

24. **Diamondback** is an investment adviser based in Stamford, Connecticut. Diamondback has been registered with the Commission since January 2006 and serves as adviser to hedge funds with approximately \$4 billion worth of assets under management.

25. **Level Global** is an unregistered investment adviser located in Greenwich, Connecticut and New York, New York that managed hedge funds with approximately \$4 billion worth of assets in 2010.

RELEVANT ENTITIES

26. **Dell** is a Delaware corporation headquartered in Round Rock, Texas. Dell develops and sells computers and related products and services. Dell's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and its stock is traded on the NASDAQ under the symbol "DELL."

27. **Nvidia** is a Delaware corporation headquartered in Santa Clara, California. Nvidia develops and sells graphics processors used in smart phones, tablets, video game systems, and other computing devices. Nvidia's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and its stock is traded on the NASDAQ under the symbol "NVDA."

28. **Investment Adviser A** is a registered investment adviser based in New York, New York.

29. **Investment Adviser B** is an unregistered investment adviser based in South Pasadena, California and Reno, Nevada.

30. **Hedge Fund A** is an unregistered investment adviser based in New York, New York.

FACTS

INSIDER TRADING IN THE SECURITIES OF DELL

31. During at least 2008, the Dell Insider regularly provided material nonpublic information concerning Dell's quarterly financial results to Goyal, an analyst at Investment Adviser A.

32. Goyal, who previously worked at Dell, was friends with the Dell Insider and during the period that the Dell Insider was providing Goyal with inside information about Dell, the Dell Insider sought and received career advice from Goyal.

33. The Dell Insider provided Goyal with material nonpublic financial performance metrics including Dell quarterly revenues and gross margins. The Dell Insider provided these figures to Goyal before the company made them public at its quarterly earnings announcements.

34. The Dell Insider's provision of this information to Goyal was in clear violation of the Dell Code of Conduct, which specifically prohibits "using any material inside information about Dell or any other company (such as [a] supplier or vendor) to trade any stock," and also prohibits "provid[ing] 'tips' or shar[ing] material inside information with any other person who might trade the stock."

35. Goyal passed the information that he received from the Dell Insider to his friend Tortora, an analyst at Diamondback.

36. In exchange for Goyal providing material nonpublic information regarding Dell, Tortora and his supervisor Newman arranged for Diamondback to make soft dollar

payments totaling at least \$175,000 to a brokerage account maintained by a nominee of Goyal. Goyal's nominee never performed any services for Diamondback that would warrant soft-dollar payments by Diamondback.

37. After receiving the Dell information from Goyal, Tortora passed the information to Newman and informed Newman that the Dell information originated from a Dell insider.

38. After receiving the Dell information from Tortora, Newman used this material nonpublic information to trade Dell securities on behalf of Diamondback hedge funds and reaped profits totaling approximately \$3.8 million.

39. Tortora also passed the information to Adondakis, Horvath and Kuo, with whom Tortora regularly exchanged information regarding various technology companies.

40. After receiving the Dell information from Tortora, Adondakis passed the information to Chiasson, one of his superiors at Level Global. Chiasson and others at Level Global used that information to reap huge profits for Level Global hedge funds by trading Dell securities around the time of two of the company's quarterly earnings announcements. During 2008, hedge funds managed by Level Global reaped approximately \$57 million in profits from trading Dell securities on the basis of the inside information that originated from the Dell Insider.

41. Similarly, the employers of Horvath and Kuo also profited from the Dell inside information provided by Tortora. Horvath's employer, Hedge Fund A, and Kuo's employer, Investment Adviser B, executed trades in Dell based upon the information that Horvath and Kuo received from Tortora. In the days surrounding two separate quarterly announcements by Dell in 2008, these trades generated \$1.4 million in profits for Hedge

Fund A and \$180,000 in profits and losses avoided for a hedge fund managed by Investment Adviser B.

Dell's First Quarter 2008 Earnings Announcement

42. In the weeks leading up to Dell's May 29, 2008 announcement of its first quarter financial results (the three-month period from February 2, 2008 to May 2, 2008), the Dell Insider had several telephone calls with Goyal in which the Dell Insider provided Goyal with material nonpublic information. Beginning in at least early May, as Dell was in the initial stages of computing its financial results, the Dell Insider provided Goyal with preliminary estimates of the company's revenues and gross profit margin. Over time, as the company got closer to finalizing its earnings report, the information that the Dell Insider provided to Goyal became more precise.

43. Soon after each of Goyal's calls with the Dell Insider, Goyal called Tortora and passed along the information that the Dell Insider had provided. And soon after speaking with Goyal, Tortora passed the information along to Newman, Adondakis, Horvath, and Kuo.

44. On the evening of Monday, May 5, 2008, the Dell Insider passed to Goyal material nonpublic information concerning Dell's first quarter results during a 71-minute phone call. Approximately two minutes later, Goyal placed a call to Tortora, and then called Tortora again about one hour later. After checking his voicemail, Tortora telephoned Goyal and the two spoke for 17 minutes.

45. The next morning, May 6, 2008, Tortora placed phone calls to Newman (8 minutes) and Adondakis (10 minutes). In each of those calls, Tortora passed along the estimates of Dell's first quarter results that Tortora had received from Goyal the night

before (and which Goyal had received from the Dell Insider). Tortora also indicated to Newman and Adondakis that the information he was passing to them came from a source within Dell.

46. Later that day, Tortora placed phone calls to Horvath (11 minutes) and Kuo (4 minutes) and passed along to them the same information regarding Dell that Tortora had shared with Newman and Adondakis that morning.

47. Kuo's employer, Investment Adviser B, purchased 3,600 shares of Dell on behalf of a hedge fund that it managed in the two consecutive days after Tortora spoke to Kuo on May 6, 2008.

48. On the evening of May 11, 2008, Goyal and the Dell Insider had a 32-minute phone call. During that call, the Dell Insider provided updated details about Dell's first quarter results. Approximately one minute after that call ended, Goyal telephoned Tortora. About 15 minutes later, Goyal and Tortora had a 24-minute call in which Goyal provided Tortora with the information he had just received from the Dell Insider.

49. At 7:10 the next morning, May 12, Tortora spoke to Horvath via telephone for 14 minutes, passing along the information regarding Dell that Tortora had received from Goyal. About nine minutes later, Horvath telephoned the portfolio manager at Hedge Fund A to whom Horvath reported, and the two spoke for ten minutes. The next day, May 13, the portfolio manager at Hedge Fund A to whom Horvath reported purchased 1,000 Dell call options² with a strike price of \$20 on behalf of Hedge Fund A.

² A call option is a financial contract between two parties that gives the buyer the right, but not the obligation, to buy an agreed quantity of stock during a specified time period for a specified price, known as the strike price. A buyer pays a fee, or premium, to

50. At 8:46 am on May 12, Tortora emailed Adondakis saying that he wanted to "catch up on Dell." Eight minutes after Tortora sent that email, Adondakis called Tortora and they spoke for 14 minutes. The two spoke again about an hour later (for 8 minutes). During these calls, Tortora and Adondakis discussed the information regarding Dell that Tortora had received from Goyal the previous night. Two hours after Adondakis's second call with Tortora, Adondakis called Chiasson and they spoke for 13 minutes. Later that day, Level Global funds purchased 3,500 Dell call options.

51. At 12:12 pm on May 12, 2008, Kuo sent an instant message to Tortora asking if there were "any positives out of dell recently?" Tortora responded that he would call Kuo with an update. Later that day, Tortora telephoned Kuo and during this 14-minute telephone call, Tortora provided Kuo with the Dell inside information he had obtained from Goyal. The next day, Kuo's employer, Investment Adviser B, bought 1,300 shares of Dell stock on behalf of a hedge fund that it managed.

52. Goyal had another call with the Dell Insider on the evening of May 15, 2008. Minutes after completing his call with the Dell Insider, Goyal telephoned Tortora and provided Tortora with the Dell inside information that Goyal had just received. The following morning, Tortora spoke with Adondakis, Horvath and Newman and conveyed the Dell inside information to them.

53. On the morning of Friday, May 16, 2008, Goyal and Tortora had a brief email exchange in which they agreed that the numbers received from the Dell Insider indicated that Dell's earnings per share of common stock ("EPS") for the first quarter would be three cents above the then-current consensus among Wall Street analysts.

purchase this right. A buyer of a call option generally stands to gain if the price of the stock increases.

54. Minutes after that email exchange, Tortora called Newman and the two spoke for two minutes. During that call, Tortora passed along the information he had received from Goyal regarding Dell, as well as his observation that – based on the inside information received from Goyal – Dell’s first quarter EPS would exceed analyst expectations.

55. Approximately 30 minutes after Tortora’s call with Newman, the Diamondback portfolio controlled by Newman began purchasing shares of Dell. Newman caused Diamondback’s hedge funds to purchase 250,000 shares of Dell stock over the next 23 minutes and an additional 225,000 shares later that day. By the end of that trading day, Diamondback hedge funds for which Newman had trading authority had purchased 475,000 shares of Dell (valued at over \$10 million at the market close).

56. Five minutes after emailing with Goyal on May 16, 2008, Tortora called Adondakis at work and passed along the Dell inside information he had received from Goyal. Adondakis, in turn, conveyed this information to Chiasson, one of his superiors at Level Global. Adondakis informed Chiasson that this information had originated from a Dell insider.

57. Approximately fourteen minutes after the end of Adondakis’s call with Tortora, Level Global hedge funds began purchasing Dell stock, obtaining 750,000 shares (worth approximately \$15.5 million) by the end of the day.

58. In the weeks leading up to Dell’s first quarter earnings announcement, two Level Global hedge funds amassed more than 1.7 million shares of Dell stock, as well as call options to buy additional Dell shares, in anticipation of Dell announcing its better-than-expected first quarter performance.

59. On the afternoon of Friday, May 16, 2008, Tortora sent an instant message to Kuo instructing Kuo to call Tortora's cell phone. Kuo telephoned Tortora immediately and during the ensuing call Tortora passed the updated Dell inside information to Kuo. During the next three trading days, May 19, May 20, and May 21, a hedge fund managed by Investment Adviser B purchased 5,000 shares of Dell.

60. On May 28, 2008 (the day before Dell's earnings release), Goyal spoke to the Dell Insider and received a final update regarding Dell's first quarter performance. Consistent with prior tips, the information indicated that Dell's first quarter earnings per share would surpass analysts' expectations. Minutes after completing his call with the Dell Insider, Goyal called Tortora and passed the Dell Insider's updated information to him. The next morning, May 29, Tortora spoke with Adondakis, Horvath and Newman by telephone and passed the information to them.

61. Approximately 45 minutes after Tortora spoke with Horvath, the Hedge Fund A portfolio manager to whom Horvath reported sold the Dell call options with a strike price of \$20 that he had purchased on behalf of Hedge Fund A on May 13, netting profits of over \$126,000, and staked a more aggressive long position by purchasing 1,750 Dell call options with a strike price of \$22. Later that day, the same portfolio manager also bought 1,000 Dell call options with a strike price of \$21 on behalf of Hedge Fund A.

62. After market close on May 29, 2008, Dell announced its first quarter financial results. The company reported adjusted earnings of \$0.38 per share, a number which – as Goyal's inside information had indicated – substantially exceeded analysts' consensus estimate of \$0.34 per share. The next day, Dell's share price, which had

closed at \$21.81 just before the announcement, increased more than 5 percent to a close at \$23.06.

63. In the days that followed, the Level Global hedge funds sold their Dell shares and option contracts and reaped over \$4 million in trading profits.

64. The increase in Dell's share price after the announcement also yielded significant profits for Diamondback hedge funds, as Newman sold the long position in Dell that he had acquired on behalf of the Diamondback funds. In total, between May 7 and June 3, 2008, Newman realized for Diamondback's hedge funds profits of approximately \$1 million from his trades in Dell based on the material nonpublic information he received from Tortora.

65. After Dell announced its first quarter earnings, Hedge Fund A sold its Dell options positions. Including the approximately \$126,000 in profits that Hedge Fund A made readjusting its options positions on May 28, it realized profits of approximately \$430,000.

66. Approximately 40 minutes after Dell's May 29, 2008 earnings announcement, Kuo sent an instant message to Tortora saying "nice call on Dell." A hedge fund managed by Investment Adviser B reaped at least \$103,000 in profits trading Dell securities around the May 29 announcement.

Dell's Second Quarter 2008 Earnings Announcement

67. The Dell Insider once again provided Goyal with inside information concerning Dell's revenues and gross profit margin in advance of the company's August 28, 2008 announcement of its financial results for its second quarter (the period from May 3, 2008 to August 1, 2008).

68. Goyal began receiving this information no later than July 2, 2008. As in the prior quarter, Goyal received updates as the company revised its calculations in the weeks leading up to the announcement of quarterly results.

69. Goyal provided the Dell inside information to Tortora, who passed it to Newman, Adondakis, Horvath, and Kuo.

70. On the evening of August 4, 2008, during a 40-minute telephone call between the Dell Insider and Goyal, the Dell Insider provided Goyal with updated inside information concerning Dell's second quarter financial results. Early the following morning, Goyal telephoned Tortora and the two spoke for approximately ten minutes. During this call, Goyal communicated to Tortora the inside information he had received from the Dell Insider.

71. While he was still on the phone with Goyal, Tortora sent an email to Newman that conveyed the inside information he had just received from Goyal — including Dell's calculation of its revenues and gross margin. Shortly afterwards, Tortora forwarded to Adondakis, Horvath, and Kuo the email he had sent to Newman.

72. Among other information, Tortora's email conveyed that Dell's then-current calculation of its gross profit margin for the second quarter was 17.5 percent, which was significantly worse than the 18.3 percent figure that analysts were expecting at that time.

73. One minute after receiving Tortora's email, Newman responded by sending Tortora an instant message asking if "the dell [information was] from sandy?" and Tortora replied that it was.

74. On August 5, 2008, shortly after Adondakis received the email from Tortora concerning Dell's gross margin, Adondakis passed this information to Chiasson, who directed Adondakis to estimate the impact of the worse-than-expected gross margin figure on the price of Dell's stock.

75. After presenting his analysis to Chiasson and at least one other person at Level Global, Adondakis sent an email to Chiasson and other Level Global employees stating that Dell's gross margin would likely cause the price of the company's stock – which was trading at approximately \$25 per share – to drop approximately 20% and suggested that Level Global “use the pending GM data” (*i.e.*, the updated inside information that Adondakis expected to continue to receive from Tortora) to adjust Level Global's short position in advance of Dell's quarterly earnings announcement.

76. On the evening of August 14, 2008, the Dell Insider placed a fifty-minute telephone call to Goyal and passed Goyal material nonpublic information, including that Dell's second quarter gross margin was still expected to be lower than analysts were predicting.

77. The following morning, August 15, a telephone number associated with Goyal's office at Investment Adviser A placed a call to Tortora's mobile phone that lasted for approximately three minutes. At approximately 2:00 pm that afternoon, Tortora spoke with Goyal again. Approximately one hour later, the Diamondback portfolio controlled by Newman shorted Dell stock.³ Newman shorted a total of 325,000 shares on behalf of Diamondback hedge funds between 3:13 pm and the close of trading.

³ “Shorting” or “short selling” is the practice of selling a security that one does not own, but rather has arranged to borrow from a third party, with the intention of purchasing (also called “covering”) the security at a later date. A short seller stands to gain if the

78. On the next trading day, Monday, August 18, 2008, Tortora passed the update concerning Dell's disappointing gross margin results to Adondakis, Horvath and Kuo.

79. On August 18 at approximately 9:13 am, Tortora telephoned Adondakis (who was in California with Chiasson attending business meetings) and spoke to him for 18 minutes. Later that day, Chiasson sent an email to a trader at Level Global instructing him to short Dell stock. By the close of trading, Level Global hedge funds had shorted 700,000 shares of Dell.

80. The following day, August 19, Chiasson continued to build Level Global's short position in Dell, including by purchasing Dell put options.⁴

81. At approximately 12:09 pm on August 18, Tortora telephoned Kuo and spoke to him for approximately three minutes, then immediately called him again at 12:12 pm and spoke for another 3 minutes. During these calls, Tortora passed the updated information concerning Dell's worse-than expected results to Kuo. About fifteen minutes after this second call, a hedge fund managed by Kuo's employer, Investment Adviser B, sold 9,300 shares of Dell stock (approximately one-third of its total position).

82. At approximately 12:20 pm on August 18, Tortora spoke to Horvath via telephone for approximately 10 minutes and passed the updated inside information concerning Dell's worse-than-expected results to Horvath. About three minutes after that

price of the security declines between the short sale and the purchase because the short seller has sold the security at a price that is greater than the purchase price.

⁴ A put option is a financial contract between two parties that gives the buyer the right, but not the obligation, to sell an agreed quantity of stock during a specified time period at a specified price. As with a call option, a buyer pays a premium to purchase this right. A buyer of a put option generally stands to gain if the price of the stock decreases.

call, Horvath telephoned the Hedge Fund A portfolio manager to whom he reported, and spoke to him for two minutes. One minute after that call ended, Hedge Fund A began selling Dell stock short, amassing a Dell short position of 167,368 shares by the end of the day.

83. On the evening of August 24, 2008, Goyal received another update from the Dell Insider. The following day, August 25, Goyal placed a telephone call to Tortora. During this call, which lasted approximately two minutes, Goyal informed Tortora that Dell was still planning to announce a worse-than-expected gross margin.

84. Approximately 20 minutes after that call, Tortora sent an email to Adondakis, Horvath, and Kuo indicating that Tortora had done a new "dell check" and that it was the "same as before" and sounded bad for Dell.

85. Later that day, Adondakis placed a short telephone call to Chiasson's mobile phone.

86. The following morning, August 26, 2008, Adondakis had a more lengthy telephone conference call with Chiasson and another Level Global employee during which the three of them discussed the updated inside information that Adondakis had received from Tortora. Immediately after that telephone call, Chiasson sent an email to another Level Global portfolio manager stating: "our call [on the dell gross margin] is 17.5ish" Later that day, Chiasson sent an instant message to the same Level Global portfolio manager and indicated that another hedge fund investor who also had sources at Dell was also expecting Dell to announce a worse-than-expected gross margin figure.

87. On August 27, 2008, the day before Dell announced its second quarter financial results, Adondakis, Chiasson and at least one other Level Global portfolio

manager participated in a forty-minute telephone call during which Adondakis conveyed the latest inside information that he had received concerning Dell's gross margin and the group discussed this updated inside information.

88. After the close of trading on August 28, 2008, Dell announced its second quarter financial results. Its announcement of a gross margin of 17.2 percent was substantially worse than the 18.4 percent that analysts had expected just prior to the announcement. The following day, Dell's share price dropped more than 13 percent, from \$25.21 at the close of trading on August 28, 2008 to \$21.73 at the close of trading on August 29.

89. Minutes after Dell's disappointing announcement, Kuo sent an instant message to Tortora stating: "nice call on Dell."

90. In the weeks leading up to Dell's second quarter earnings announcement, Goyal's tippees had caused their funds to short Dell and/or sell the long positions that they had previously accumulated.

91. Between July 8, 2008 and August 28, 2008, Level Global hedge funds accumulated a net short position in Dell stock of 8.6 million shares and added to this short position by purchasing put options to sell additional shares of Dell stock.

92. Between July 3 and August 28, Newman caused the Diamondback funds he controlled to amass a short position of 700,000 shares and to add to this short position by purchasing put options to sell additional shares.

93. Between August 18 and August 28, the Hedge Fund A portfolio manager to whom Horvath reported, established a Dell short position of approximately 150,000

shares on behalf of Hedge Fund A and added to this short position by purchasing put options to sell additional shares and by short-selling Dell call options.

94. Between July 8 and August 28, a hedge fund managed by the investment adviser for whom Kuo worked, Investment Adviser B, sold approximately 28,500 shares of Dell stock or 75 percent of its preexisting Dell position.

95. In the weeks following the announcement, the Level Global hedge funds that had established Dell short positions (in equity and/or options) based on the Dell Insider's information closed these positions and reaped over \$53 million in profits.

96. The Diamondback hedge funds managed by Newman also reaped significant profits from the drop in Dell's share price as Newman closed out his short position. In total, the Diamondback funds reaped approximately \$2.8 million in profits from Newman's trading in Dell shares and options from August 5 to September 4, 2008, all of which was based on material nonpublic information that Newman obtained from Tortora.

97. The Hedge Fund A portfolio to which Horvath was assigned realized profits of approximately \$1 million from trading Dell equities and options based on the material nonpublic information that Horvath obtained from Tortora.

98. A hedge fund managed by Kuo's employer, Investment Adviser B, avoided approximately \$78,000 in losses by selling most of its Dell holdings in advance of the company's announcement of its disappointing second quarter results.

INSIDER TRADING IN THE SECURITIES OF NVIDIA

99. In addition to engaging in insider trading in the securities of Dell, defendants Kuo, Adondakis, Tortora, Newman, Chiasson, and Diamondback and Level

Global obtained material nonpublic information concerning the publicly traded company Nvidia and either traded on the basis of that information or passed the information on to others who traded.

100. During at least 2009, Kuo obtained material nonpublic information concerning Nvidia's calculation of its revenues, gross profit margins and other important financial metrics before the company made these figures public in its quarterly earnings announcements. As was the case with the information that Goyal obtained from the Dell Insider, Kuo sometimes received not just one but a series of tips — with ever improving accuracy and reliability — as Nvidia finalized its financial results for a given quarter and prepared to publicly report them.

101. In April and May 2009, for example, Kuo obtained and forwarded material nonpublic information concerning Nvidia's financial performance for the first quarter of the company's 2010 fiscal year — a period running from January 26, 2009 to April 26, 2009 — in advance of the company's earnings announcement on May 7, 2009. Trading on the basis of that inside information, hedge funds managed by Diamondback, Level Global, and Investment Adviser B realized profits and avoided losses of more than \$15.8 million.

102. In early April 2009, Kuo obtained material nonpublic information concerning Nvidia's first quarter financial performance, including the company's preliminary calculations of its overall revenue and gross profit margin. These early tips indicated that the company might announce a first quarter gross profit margin that was substantially worse than Wall Street analysts were expecting. Based on this information,

a hedge fund managed by Investment Adviser B sold 4,000 shares of Nvidia stock on April 15 and an additional 5,000 shares on April 20, 2009.

103. On or about the morning of April 27, 2009, Kuo obtained an update concerning Nvidia's financial performance and sent an email to Adondakis, Tortora, and others in which he summarized the inside information he had received. Among other metrics, Kuo reported that the company was expecting to report a gross profit margin of approximately 30 percent, which was substantially lower than analysts' then-current consensus of approximately 35 percent.

104. Within three minutes of receiving Kuo's April 27 email, Tortora forwarded the email to Newman. Less than four minutes later, the Diamondback portfolio controlled by Newman initiated a short position in Nvidia stock, betting that the price of the stock would go down.

105. Less than eight minutes after receiving Kuo's April 27 email, Adondakis sent an email to Chiasson advising him of Nvidia's worse-than-expected first quarter gross margin. Less than seven minutes later, Chiasson caused two Level Global hedge funds to start selling Nvidia stock. By the close of trading on April 27, the two Level Global hedge funds had sold all of their Nvidia holdings — this amounted to a sale of more than \$32.7 million worth of Nvidia securities.

106. As Nvidia's quarterly earnings announcement approached, Kuo obtained and relayed updates concerning the revenue and gross margin numbers the company would report. On May 4, Kuo emailed Adondakis, Tortora and others to advise them that his source had stated that Nvidia would report first quarter revenues of "around \$668

million” and was still planning to report a worse-than-expected gross profit margin of 30 percent.

107. Based on this May 4 update, a hedge fund managed by Investment Adviser B sold approximately 29,000 shares of Nvidia stock between May 5 and May 7 and established a short position in advance of the quarterly earnings announcement on the evening of May 7.

108. Within 45 minutes of receiving Kuo’s May 4 email, Adondakis informed Chiasson of the updated inside information and Chiasson caused Level Global’s hedge funds to start shorting Nvidia stock. By the time of Nvidia’s earnings announcement on May 7, Level Global hedge funds had acquired a short position in Nvidia stock of approximately 3.9 million shares.

109. Trading on the basis of the inside information that Tortora received from Kuo on April 27 and May 4, Newman established a short position in Nvidia stock. By the time of the company’s May 7 earnings announcement, Diamondback hedge funds controlled by Newman held a short position in Nvidia of approximately 70,000 shares.

110. After the close of trading on May 7, Nvidia announced its first quarter financial results including a gross profit margin of 30.6%. The gross margin number fell substantially short of analysts’ consensus estimate of 35%. On May 8, the day after the announcement, Nvidia stock, which had closed at \$10.73 per share on May 7, fell as low as \$9.11 and closed at \$9.25.

111. On May 8, Newman closed the short position he had established for Diamondback’s hedge funds based on material nonpublic information that Kuo passed to

Tortora. Diamondback hedge funds realized profits of approximately \$73,000 trading on the basis of this information between April 27 and May 8.

112. On May 11, a hedge fund managed by Investment Adviser B covered the Nvidia short position that it had established based on the material nonpublic information Kuo had obtained. By selling Nvidia stock and establishing a short position instead, Investment Adviser B's hedge fund benefited by more than \$90,000 through a combination of profits and avoidance of losses that it otherwise would have suffered.

113. Between May 8 and May 13, Level Global hedge funds covered the short positions they had acquired in the days leading up to the Nvidia earnings announcement. In doing so, Level Global hedge funds reaped over \$10.1 million in trading profits. Those profits were in addition to \$5.4 million in losses that Level Global avoided by selling Nvidia shares on April 27.

CLAIMS FOR RELIEF

CLAIM I

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against all Defendants)

114. The Commission realleges and incorporates by reference paragraphs 1 through 113, as though fully set forth herein.

115. The information provided by the Dell Insider to defendant Goyal, was, in each case, material and nonpublic. In addition, the information was, in each case, considered confidential by Dell, the company that was the source of the information, and Dell had policies protecting confidential information.

116. The Dell Insider provided the material nonpublic information to Goyal in breach of the fiduciary duty that the Dell Insider owed to Dell, and did so with the expectation of receiving a benefit.

117. Goyal knew, recklessly disregarded, or should have known, that the Dell Insider owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

118. The information that defendant Kuo obtained regarding Nvidia was material and nonpublic. In addition, the information was considered confidential by Nvidia, the company that was the source of the information and which had policies protecting confidential information.

119. Goyal, Tortora, Adondakis, Horvath, Kuo, Newman, and Chiasson each tipped their respective tippees material nonpublic information concerning Dell and/or Nvidia, with the expectation of a benefit from doing so, and each knew, recklessly disregarded, or should have known, that the information was conveyed in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence.

120. Goyal, Tortora, Adondakis, Horvath, Kuo, Newman, Chiasson, Diamondback and Level Global each knew, recklessly disregarded, or should have known, that the material nonpublic information concerning Dell and/or Nvidia that each received from their respective tippees was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

121. Tortora, Newman, and Diamondback are jointly and severally liable for the Diamondback funds' trading because they each directly or indirectly effectuated the

trades on behalf of the Diamondback funds and/or unlawfully disclosed the material nonpublic information to the Diamondback funds.

122. Adondakis, Chiasson, and Level Global are jointly and severally liable for the Level Global funds' trading because they each directly or indirectly effectuated the trades on behalf of the Level Global funds and/or unlawfully disclosed the material nonpublic information to the Level Global funds.

123. Horvath is liable for Hedge Fund A's trading because he directly or indirectly effectuated the trades on behalf of Hedge Fund A and/or unlawfully disclosed the material nonpublic information to Hedge Fund A.

124. Kuo is liable for Investment Adviser B's trading because he directly or indirectly effectuated the trades on behalf of a fund managed by Investment Adviser B and/or unlawfully disclosed the material nonpublic information to Investment Adviser B's fund.

125. By virtue of the foregoing, Adondakis, Chiasson, Goyal, Horvath, Kuo, Newman, Tortora, Diamondback and Level Global, and each of them, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

126. By virtue of the foregoing, defendants Adondakis, Chiasson, Goyal, Horvath, Kuo, Newman, Tortora, Diamondback and Level Global, and each of them, directly or indirectly, violated, and unless enjoined, will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

CLAIM II

Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against Defendants Goyal, Tortora, Newman, Adondakis, Chiasson, Horvath, and Kuo)

127. The Commission realleges and incorporates by reference paragraphs 1 through 126, as though fully set forth herein.

128. By knowingly or recklessly passing along information which he knew to be material nonpublic information and which he knew had been provided to him in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, Goyal, by use of the means or instrumentalities of interstate commerce, or of the mails, with scienter, aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by the Dell Insider and Tortora, in contravention of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

129. By knowingly or recklessly passing along information which he knew to be material nonpublic information and which he knew had been provided to him in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, Tortora, by use of the means or instrumentalities of interstate commerce, or of the mails, with scienter, aided and abetted violations of Section 10(b) of the Exchange

Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by Goyal, Adondakis, Newman, Diamondback, Horvath, Kuo and others in contravention of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

130. By knowingly or recklessly passing along information which he knew to be material nonpublic information and which he knew had been provided to him in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, Newman, by use of the means or instrumentalities of interstate commerce, or of the mails, with scienter, aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by Goyal, Tortora and Diamondback, in contravention of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

131. By knowingly or recklessly passing along information which he knew to be material nonpublic information and which he knew had been provided to him in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, Adondakis, by use of the means or instrumentalities of interstate commerce, or of the mails, with scienter, aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by Tortora, Kuo, Chiasson, Level Global and others, in contravention of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

132. By knowingly or recklessly passing along information which he knew to be material nonpublic information and which he knew had been provided to him in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, Chiasson, by use of the means or instrumentalities of interstate commerce, or

of the mails, with scienter, aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by Adondakis, Level Global and others, in contravention of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

133. By knowingly or recklessly passing along information which he knew to be material nonpublic information and which he knew had been provided to him in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, Horvath, by use of the means or instrumentalities of interstate commerce, or of the mails, with scienter, aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by Tortora and the Hedge Fund A portfolio manager to whom Horvath reported, in contravention of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

134. By knowingly or recklessly passing along information which he knew to be material nonpublic information and which he knew had been provided to him in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, Kuo, by use of the means or instrumentalities of interstate commerce, or of the mails, with scienter, aided and abetted violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] by Adondakis, Tortora, Investment Adviser B and others in contravention of Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

CLAIM III
Violations of Section 17(a) of the Securities Act
(Against All Defendants)

135. The Commission realleges and incorporates by reference paragraphs 1 through 134, as though fully set forth herein.

136. By virtue of the foregoing, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, defendants Adondakis, Chiasson, Goyal, Horvath, Kuo, Newman, Tortora, Diamondback and Level Global, and each of them: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

137. By reason of the conduct described above, each of the defendants directly or indirectly violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

RELIEF SOUGHT

WHEREFORE, the Commission respectfully requests that this Court enter a Final Judgment:

I.

Permanently restraining and enjoining defendants Adondakis, Chiasson, Goyal, Horvath, Kuo, Newman, Tortora, Diamondback and Level Global, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

II.

Permanently restraining and enjoining defendants Adondakis, Chiasson, Goyal, Horvath, Kuo, Newman, Tortora, Diamondback and Level Global, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

III.

Ordering defendants Adondakis, Chiasson, Goyal, Horvath, Kuo, Newman, Tortora, Diamondback and Level Global to disgorge, with prejudgment interest, all ill-gotten gains received as a result of the conduct alleged in this Complaint, including their ill-gotten gains, and the illicit trading profits, other ill-gotten gains, and/or losses avoided of their direct and downstream tippees;

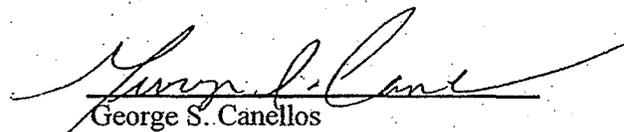
IV.

Ordering defendants Adondakis, Chiasson, Goyal, Horvath, Kuo, Newman, Tortora, Diamondback and Level Global to pay civil monetary penalties pursuant to Section 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1]; and

V.

Granting such other and further relief as this Court may deem just and proper

Dated: New York, New York
January 18, 2012



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Attorney for Plaintiff
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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

SPYRIDON ADONDAKIS,
 ANTHONY CHIASSON,
 SANDEEP GOYAL,
 JON HORVATH,
 DANNY KUO,
 TODD NEWMAN,
 JESSE TORTORA,
 DIAMONDBACK CAPITAL MANAGEMENT, LLC,
 and
 LEVEL GLOBAL INVESTORS, L.P.,

Defendants.

12-cv-0409 (HB)

ECF CASE

JUDGMENT AS TO DEFENDANT TODD NEWMAN

The Securities and Exchange Commission, having filed a Complaint and Defendant Todd Newman ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; agreed not to oppose entry of this Judgment based solely on the collateral estoppel effect of his conviction in United States v. Todd Newman, S2-12-cr-121-RJS (S.D.N.Y.).

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant may be liable to pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. The Court shall determine the amounts of the disgorgement and civil penalty, if any, upon motion of the Commission. Prejudgment interest shall be calculated based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) the collateral estoppel effect of the Defendant's conviction will preclude him from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of this Judgment; and (c) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for

disgorgement and/or a civil penalty, the parties may take discovery, limited to the issue of Defendant's financial condition,, including discovery from appropriate non-parties.

IV.

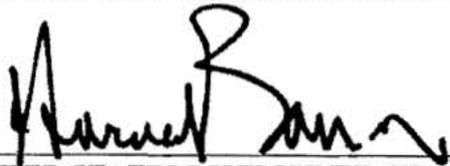
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

V.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

Dated:

10/4, 13


UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
SECURITIES AND EXCHANGE COMMISSION, :
:
: *Plaintiff,* :
:
v. :
:
SPYRIDON ADONDAKIS, ANTHONY :
CHIASSON, SANDEEP GOYAL, JON :
HORVATH, DANNY KUO, TODD NEWMAN, :
JESSE TORTORA, DIAMONDBACK CAPITAL :
MANAGEMENT, LLC, and :
LEVEL GLOBAL INVESTORS, L.P., :
:
: *Defendants.* :
----- X

No. 12-CV-409 (JGK)
FILED ELECTRONICALLY

ANSWER OF TODD NEWMAN TO THE COMPLAINT

Defendant Todd Newman (“Mr. Newman”) states as follows for his Answer in response to the Complaint, dated January 18, 2012 (the “Complaint”). To the extent that certain paragraphs in the Complaint include allegations against defendants other than Mr. Newman, Mr. Newman’s responses to the allegations contained in such paragraphs, set forth herein, relate to Mr. Newman only and to no other defendant. In providing this unsworn and nontestimonial Answer through undersigned counsel, Mr. Newman does not intend to, and does not, waive any privileges in this or any other proceeding, including but not limited to the privilege against self-incrimination guaranteed to him by the Fifth Amendment to the United States Constitution. Under controlling case law, the filing of the Answer in this matter does not, and is not intended to, effect a waiver of any such privilege. *Klein v. Harris*, 667 F.2d 274, 288 (2d Cir. 1981); *ACLI Int’l Commodity Servs., Inc. v. Banque Populaire Suisse*, 110 F.R.D. 278, 287-88 (S.D.N.Y. 1986); *SEC v. Cayman Islands Reinsurance Corp., Ltd.*, 551 F. Supp. 1056, 1058-59

(S.D.N.Y. 1986). Mr. Newman reserves the right to assert any such applicable privileges in this or any other proceeding.

SUMMARY

1. Mr. Newman denies the allegations in paragraph 1 to the extent that they apply to him, admits that the allegations purport to describe Plaintiff's allegations, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1.

Insider Trading in the Securities of Dell

2. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

3. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3, except admits that in 2008, Jesse Tortora ("Tortora") was employed as an analyst at Diamondback Capital Management, LLC ("Diamondback").

4. Mr. Newman denies the allegations in paragraph 4 to the extent they apply to him, except admits that during 2008, he was a portfolio manager at Diamondback, that Tortora reported to him, and that he effected trades in the securities of Dell on behalf of funds managed by Diamondback, and refers to trading records for an accurate statement of such trading.

5. Mr. Newman denies the allegations in paragraph 5 to the extent that they apply to him.

6. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

7. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

Insider Trading in the Securities of Nvidia

10. Mr. Newman denies the allegations in paragraph 10 to the extent that they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10.

11. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. Mr. Newman denies the allegations in paragraph 12 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12.

13. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

14. To the extent the allegations in paragraph 14 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman admits that Plaintiff purports to bring this action pursuant to the statutes cited in paragraph 14, and that Plaintiff purports to seek the relief described in paragraph 14.

JURISDICTION AND VENUE

15. To the extent the allegations in paragraph 15 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman admits that Plaintiff purports to

base jurisdiction over the subject matter of this action pursuant to the statutes cited in paragraph 15.

16. To the extent the allegations in paragraph 16 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman admits that Diamondback had offices in New York, New York at certain times, that Tortora worked in New York, New York at certain times, and that Plaintiff purports to base venue on the statutes cited in Paragraph 16. Plaintiff currently lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 16.

DEFENDANTS

17. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18.

19. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19.

20. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

21. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21.

22. Mr. Newman admits the allegations in paragraph 22.

23. Mr. Newman admits the allegations in the second sentence of paragraph 23, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 23.

24. Mr. Newman admits that Diamondback is an investment adviser to certain funds. The allegations contained in paragraph 24 are based on public information, and Mr. Newman refers to such information for an accurate statement of its contents.

25. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25.

RELEVANT ENTITIES

26. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26, except admits that Dell is a public company headquartered in Round Rock, Texas that develops and sells computers and related products and services and that Dell's stock trades on the NASDAQ under the symbol "DELL."

27. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27, except admits that Nvidia is a public company headquartered in Santa Clara, CA that develops and sells graphics processors used in smart phones, tablets, video game systems, and other computing devices and that Nvidia's stock trades on the NASDAQ under the symbol "NVDA."

28. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28.

29. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

30. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

FACTS

Insider Trading in the Securities of Dell

31. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31.

32. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32.

33. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33.

34. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34.

35. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35.

36. Mr. Newman denies the allegations in paragraph 36 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 36.

37. Mr. Newman denies the allegations in paragraph 37.

38. Mr. Newman denies the allegations in paragraph 38, except admits that he effected trades in the securities of Dell on behalf of funds managed by Diamondback, and refers to trading records for an accurate statement of such trading.

39. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39.

40. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40.

41. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41.

Dell's First Quarter 2008 Earnings Announcement

42. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42.

43. Mr. Newman denies the allegations in paragraph 43 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 43.

44. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44.

45. Mr. Newman denies the allegations in the second and third sentences of paragraph 45 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 45.

46. Mr. Newman denies the allegations in paragraph 46. to the extent they apply to him and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 46.

47. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47.

48. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48.

49. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49.

50. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50.

51. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51.

52. Mr. Newman denies the allegations in the last sentence of paragraph 52 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 52.

53. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53.

54. Mr. Newman denies that Tortora conveyed to him inside information from Dell, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 54.

55. Mr. Newman admits that he effected trades in the securities of Dell on behalf of funds managed by Diamondback, and refers to trading records for an accurate statement of such trading. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 55.

56. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56.

57. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57.

58. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58.

59. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59.

60. Mr. Newman denies that Tortora conveyed to him inside information from Dell, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 60.

61. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61.

62. Mr. Newman lacks knowledge or information sufficient to form a belief regarding inside information alleged to have been received by Goyal. The remaining allegations in paragraph 62 are based on public information, and Mr. Newman refers to such information for an accurate statement of its contents.

63. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63.

64. Mr. Newman admits that he effected trades in the securities of Dell on behalf of funds managed by Diamondback, and refers to trading records for an accurate statement of such trading. Mr. Newman denies that he traded or profited from any trades based on material nonpublic information received from Tortora. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 64.

65. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65.

66. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66.

Dell's Second Quarter 2008 Earnings Announcement

67. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67.

68. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68.

69. Mr. Newman denies that Mr. Tortora conveyed to him inside information from Dell, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 69.

70. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70.

71. Mr. Newman refers to the email for a fair and accurate statement of its terms, denies the other allegations in paragraph 71 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 71.

72. Mr. Newman refers to the email for a fair and accurate statement of its terms and otherwise denies the allegations contained in paragraph 72 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 72.

73. Mr. Newman refers to the instant messages for a fair and accurate statement of their terms, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 73.

74. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74.

75. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75.

76. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76.

77. Mr. Newman admits that he effected trades in the securities of Dell on behalf of funds managed by Diamondback, and refers to trading records for an accurate statement of such trading. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 77.

78. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78.

79. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79.

80. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80.

81. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81.

82. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82.

83. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83.

84. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84.

85. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85.

86. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86.

87. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87.

88. The allegations in paragraph 88 are based on public information, and Mr. Newman refers to such information for an accurate statement of its contents.

89. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89.

90. Mr. Newman denies the allegations in paragraph 90 to the extent that they apply to him and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 90.

91. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91.

92. Mr. Newman admits that he effected trades in the securities of Dell on behalf of funds managed by Diamondback, and refers to trading records for an accurate statement of such trading.

93. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93.

94. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94.

95. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95.

96. Mr. Newman denies that he traded or profited on the basis of material nonpublic information that he obtained from Tortora. Mr. Newman admits that he effected trades in the securities of Dell on behalf of funds managed by Diamondback, and refers to trading records produced in this action for an accurate statement of such trading. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 96.

97. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97.

98. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98.

Insider Trading in the Securities of Nvidia

99. Mr. Newman denies the allegations in paragraph 99 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 99.

100. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100.

101. Mr. Newman denies the allegations in paragraph 101 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 101.

102. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102.

103. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103.

104. Mr. Newman refers to the email for a fair and accurate statement of its terms, refers to trading records for an accurate statement of their contents, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 104.

105. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105.

106. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106.

107. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107.

108. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108.

109. Mr. Newman denies that he traded on the basis of material nonpublic information that he obtained from Tortora. Mr. Newman admits that during 2008 he effected trades in the securities of Nvidia on behalf of funds managed by Diamondback, and refers to trading records for an accurate statement of such trading. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 109.

110. The allegations in paragraph 110 are based on public information, and Mr. Newman refers to such information for an accurate statement of its contents.

111. Mr. Newman denies that he traded or profited based on material nonpublic information that he obtained from Tortora. Mr. Newman admits that during 2008 he effected trades in the securities of Nvidia on behalf of funds managed by Diamondback, and refers to trading records for an accurate statement of such trading. Mr. Newman lacks knowledge or

information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 111.

112. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 112.

113. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113.

CLAIMS FOR RELIEF

CLAIM I

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against all Defendants)

114. Mr. Newman repeats and incorporates his responses to paragraphs 1 through 113, as though fully set forth herein.

115. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115.

116. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 116.

117. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117.

118. Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 118.

119. Mr. Newman denies the allegations in paragraph 119 to the extent they apply to him and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 119.

120. Mr. Newman denies the allegations in paragraph 120 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 120.

121. To the extent the allegations in paragraph 121 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman denies the allegations in paragraph 121 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 121.

122. To the extent the allegations in paragraph 122 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122.

123. To the extent the allegations in paragraph 123 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 123.

124. To the extent the allegations in paragraph 124 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 124.

125. To the extent the allegations in paragraph 125 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman denies the allegations in paragraph 125 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 125.

126. To the extent the allegations in paragraph 126 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman denies the allegations in

paragraph 126 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 126.

CLAIM II

**Aiding and Abetting Violations of Section 10(b) of the Exchange Act
and Rule 10b-5 Thereunder
(Against all Defendants Goyal, Tortora, Newman, Adondakis, Chiasson,
Horvath, and Kuo)**

127. Mr. Newman repeats and incorporates his answers to paragraphs 1 through 126, as though fully set forth herein.

128. To the extent the allegations in paragraph 129 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 128.

129. To the extent the allegations in paragraph 129 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman denies the allegations in paragraph 129 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 129.

130. To the extent the allegations in paragraph 130 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman denies the allegations contained in paragraph 130.

131. To the extent the allegations in paragraph 130 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131.

132. To the extent the allegations in paragraph 130 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 132.

133. To the extent the allegations in paragraph 130 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 133.

134. To the extent the allegations in paragraph 134 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 134.

CLAIM III
Violations of Section 17(a) of the Securities Act
(Against all Defendants)

135. Mr. Newman repeats and incorporates his answers to paragraphs 1 through 134, as though fully set forth herein.

136. To the extent the allegations in paragraph 136 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman denies the allegations in paragraph 136 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 136.

137. To the extent the allegations in paragraph 137 state legal conclusions, no response is required. To the extent a response is required, Mr. Newman denies the allegations in paragraph 137 to the extent they apply to him, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 137.

RELIEF SOUGHT

The relief sought by Plaintiff does not contain allegations that require a response from Mr. Newman. However, Mr. Newman denies that the relief sought is appropriate or available.

To the extent any allegation in the Complaint is not admitted herein, it is denied.

AFFIRMATIVE DEFENSES

Mr. Newman asserts the following affirmative defenses without assuming the burden of proof, persuasion, or going forward as to any such defenses or issues that would otherwise rest on Plaintiff. Mr. Newman reserves the right to amend his pleadings, and to assert additional or different defenses, based upon information or evidence developed in discovery or otherwise.

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Complaint fails to allege fraud with particularity.
3. The Complaint fails to plead scienter with particularity.
4. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.
5. Plaintiff's claims are barred in whole or in part by laches.
6. Equitable relief requested by Plaintiff is unavailable, either in whole or in part, because the alleged conduct occurred wholly in the past and is unlikely to be repeated.
7. Mr. Newman acted at all times in good faith, and without reckless disregard for, knowledge of or intent to engage in any supposed wrongdoing.

Dated: March 26, 2012
New York, New York

SHEARMAN & STERLING LLP

By: /s/ John A. Nathanson
John A. Nathanson
Stephen Fishbein
Lindi Beaudreault

599 Lexington Avenue
New York, NY 10022-6069
(212) 848-4000
(646) 848-8611 (facsimile)

Attorneys for Todd Newman

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FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: 138137

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ADV Part 1A, Page 1

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 3.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

- A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
DIAMONDBACK CAPITAL MANAGEMENT, LLC
- B. Name under which you primarily conduct your advisory business, if different from Item 1.A.
DIAMONDBACK CAPITAL MANAGEMENT, LLC
List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.
- C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of
 your legal name or your primary business name:
- D. If you are registered with the SEC as an investment adviser, your SEC file number: [REDACTED]
- E. If you have a number ("CRD Number") assigned by FINRA's CRD system or by the IARD system, your CRD number: [REDACTED]
If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: [REDACTED]

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Item 1 Identifying Information (Continued)F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

Number and Street 1:

1 LANDMARK SQUARE

City:

STAMFORD

State:

CT

Number and Street 2:

15TH FLOOR

Country:

USA

ZIP+4/Postal Code:

06901-2601

If this address is a private residence, check this box:

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your principal office and place of business:

Monday-Friday Other:

Normal business hours at this location:

8:00AM TO 5:00PM

(3) Telephone number at this location:

203-399-1600

(4) Facsimile number at this location:

203-399-1637

G. Mailing address, if different from your principal office and place of business address:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

If this address is a private residence, check this box:

H. If you are a sole proprietor, state your full residence address, if different from your principal office and place of business address in Item 1.F.:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

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Item 1 Identifying Information (Continued)

I. Do you have World Wide Web site addresses? YES NO

If "yes," list these addresses on Section 1.I. of Schedule D. If a web address serves as a portal through which to access other information you have published on the World Wide Web, you may list the portal without listing addresses for all of the other information. Some advisers may need to list more than one portal address. Do not provide individual electronic mail addresses in response to this Item.

J. Contact Employee:

Name:

MARK G. HADLOCK

Telephone Number:

203 399 1636

Title:

CCO

Facsimile Number:

203 399 1637

Number and Street 1:		Number and Street 2:	
1 LANDMARK SQUARE		15TH FLOOR	
City:	State:	Country:	ZIP+4/Postal Code:
STAMFORD	CT	USA	06901-2601

Electronic mail (e-mail) address, if contact *employee* has one:
MHADLOCK@DIAMONDBACKCAP.COM

The contact employee should be an employee whom you have authorized to receive information and respond to questions about this Form ADV.

YES NO

- K. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?

If "yes," complete Section 1.K. of Schedule D.

YES NO

- L. Are you registered with a *foreign financial regulatory authority*?
- Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes", complete Section 1.L. of Schedule D.*

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

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Item 2 SEC Registration

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2 only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration.

- A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(11), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(12). You:

(1) have *assets under management* of \$25 million (in U.S. dollars) or more;

See Part 1A Instruction 2.a. to determine whether you should check this box.

(2) have your *principal office and place of business* in Wyoming;

(3) have your *principal office and place of business* outside the United States;

(4) are an investment adviser (or sub-adviser) to an investment company registered under the Investment Company Act of 1940;

See Part 1A Instruction 2.b. to determine whether you should check this box.

(5) have been designated as a nationally recognized statistical rating organization;

See Part 1A Instruction 2.c. to determine whether you should check this box.

- (6) are a pension consultant that qualifies for the exemption in rule 203A-2(b);

See Part 1A Instruction 2.d. to determine whether you should check this box.

- (7) are relying on rule 203A-2(c) because you are an investment adviser that *controls*, is *controlled by*, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

See Part 1A Instruction 2.e. to determine whether you should check this box. If you check this box, complete Section 2.A(7) of Schedule D.

- (8) are a newly formed adviser relying on rule 203A-2(d) because you expect to be eligible for SEC registration within 120 days;

See Part 1A Instruction 2.f. to determine whether you should check this box. If you check this box, complete Section 2.A(8) of Schedule D.

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

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Item 2 SEC Registration (Continued)

- (9) are a multi-state adviser relying on rule 203A-2(e);

See Part 1A Instruction 2.g. to determine whether you should check this box. If you check this box, complete Section 2.A(9) of Schedule D.

- (10) are an Internet investment adviser relying on rule 203A-2(f);

See Part 1A Instructions 2.h. to determine whether you should check this box.

- (11) have received an SEC *order* exempting you from the prohibition against registration with the SEC;

If you checked this box, complete Section 2.A(11) of Schedule D.

- (12) are no longer eligible to remain registered with the SEC.

See Part 1A Instructions 2.i. to determine whether you should check this box.

B. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. If this is an initial application, check the box(es) next to the state(s) that you would like to receive

notice of this and all subsequent filings you submit to the SEC. If this is an amendment to direct your *notice filings* to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

<input type="checkbox"/> AL	<input type="checkbox"/> ID	<input type="checkbox"/> MO	<input type="checkbox"/> PA
<input type="checkbox"/> AK	<input type="checkbox"/> IL	<input type="checkbox"/> MT	<input type="checkbox"/> PR
<input type="checkbox"/> AZ	<input type="checkbox"/> IN	<input type="checkbox"/> NE	<input type="checkbox"/> RI
<input type="checkbox"/> AR	<input type="checkbox"/> IA	<input type="checkbox"/> NV	<input type="checkbox"/> SC
<input type="checkbox"/> CA	<input type="checkbox"/> KS	<input type="checkbox"/> NH	<input type="checkbox"/> SD
<input type="checkbox"/> CO	<input type="checkbox"/> KY	<input type="checkbox"/> NJ	<input type="checkbox"/> TN
<input checked="" type="checkbox"/> CT	<input type="checkbox"/> LA	<input type="checkbox"/> NM	<input type="checkbox"/> TX
<input type="checkbox"/> DE	<input type="checkbox"/> ME	<input type="checkbox"/> NY	<input type="checkbox"/> UT
<input type="checkbox"/> DC	<input type="checkbox"/> MD	<input type="checkbox"/> NC	<input type="checkbox"/> VT
<input type="checkbox"/> FL	<input type="checkbox"/> MA	<input type="checkbox"/> ND	<input type="checkbox"/> VI
<input type="checkbox"/> GA	<input type="checkbox"/> MI	<input type="checkbox"/> OH	<input type="checkbox"/> VA
<input type="checkbox"/> GU	<input type="checkbox"/> MN	<input type="checkbox"/> OK	<input type="checkbox"/> WA
<input type="checkbox"/> HI	<input type="checkbox"/> MS	<input type="checkbox"/> OR	<input type="checkbox"/> WV
			<input type="checkbox"/> WI

If you are amending your registration to stop your notice filings from going to a state that currently receives them and you do not want to pay that state's notice filing fee for the coming year, your amendment must be filed before the end of the year (December 31).

Item 3 Form Of Organization

A. How are you organized?

- Corporation
 Sole Proprietorship
 Limited Liability Partnership (LLP)
 Partnership
 Limited Liability Company (LLC)
 Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

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Item 3 Form Of Organization (Continued)

B. In what month does your fiscal year end each year?

December

C. Under the laws of what state or country are you organized?

DELAWARE

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

YES NO

A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser? YES NO

If "yes," complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly-formed advisers for completing this Item 5.

Employees

A. Approximately how many *employees* do you have? Include full and part-time *employees* but do not include any clerical workers.

- 1-5
 6-10
 11-50
 51-250
 251-500
 501-1,000
 More than 1,000
 If more than 1,000, how many?
 (round to the nearest 1,000)

B.

(1) Approximately how many of these *employees* perform investment advisory functions (including research)?

- 0
 1-5
 6-10
 11-50
 51-250
 251-500
 501-1,000
 More than 1,000
 If more than 1,000, how many?
 (round to the nearest 1,000)

(2) Approximately how many of these *employees* are registered representatives of a broker-dealer?

- 0
 1-5
 6-10
 11-50
 51-250
 251-500
 501-1,000
 More than 1,000
 If more than 1,000, how many?
 (round to the nearest 1,000)

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A(1) and 5.B(2). If an employee performs more than one function, you should count that employee in each of your responses to Item 5.B(1) and 5.B(2).

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

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Item 5 Information About Your Advisory Business (Continued)

- (3) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?
- 0 1-5 6-10 11-50 51-250
- 251-500 501-1,000 More than 1,000 If more than 1,000, how many?
(round to the nearest 1,000)

In your response to Item 5.B(3), do not count any of your employees and count a firm only once -- do not count each of the firm's employees that solicit on your behalf.

Clients

- C. To approximately how many *clients* did you provide investment advisory services during your most-recently completed fiscal year?

- 0 1-10 11-25 26-100 101-250
- 251-500 More than 500 If more than 500, how many?
(round to the nearest 500)

- D. What types of *clients* do you have? Indicate the approximate percentage that each type of *client* comprises of your total number of *clients*.

	None	Up to 10%	11-25%	26-50%	51-75%	More Than 75%
(1) Individuals (other than <i>high net worth individuals</i>)	<input checked="" type="radio"/>	<input type="radio"/>				
(2) <i>High net worth individuals</i>	<input checked="" type="radio"/>	<input type="radio"/>				
(3) Banking or thrift institutions	<input checked="" type="radio"/>	<input type="radio"/>				
(4) Investment companies (including mutual funds)	<input checked="" type="radio"/>	<input type="radio"/>				
(5) Pension and profit sharing plans (other than plan participants)	<input checked="" type="radio"/>	<input type="radio"/>				
(6) Other pooled investment vehicles (e.g., hedge funds)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
(7) Charitable organizations	<input checked="" type="radio"/>	<input type="radio"/>				
(8) Corporations or other businesses not listed above	<input checked="" type="radio"/>	<input type="radio"/>				
(9) State or municipal <i>government entities</i>	<input checked="" type="radio"/>	<input type="radio"/>				
(10) Other:	<input checked="" type="radio"/>	<input type="radio"/>				

The category "individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, check "None" in response to Item 5.D(4).

**FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

Primary Business Name: **DIAMONDBACK CAPITAL MANAGEMENT, LLC**CRD Number: XXXXXXXXXX

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Item 5 Information About Your Advisory Business (Continued)Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- (1) A percentage of assets under your management
- (2) Hourly charges
- (3) Subscription fees (for a newsletter or periodical)
- (4) Fixed fees (other than subscription fees)
- (5) Commissions
- (6) *Performance-based fees*
- (7) Other (specify):

Assets Under Management

F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios? YES NO

(2) If yes, what is the amount of your assets under management and total number of accounts?

	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) \$ 1132325525 3123991435.00	(d) 2
Non-Discretionary:	(b) \$ 0 .00	(e) 0
Total:	(c) \$ 1132325525 3123991435.00	(f) 2

Part 1A Instruction 5.b. explains how to calculate your assets under management. You must follow these instructions carefully when completing this Item.

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- (1) Financial planning services
- (2) Portfolio management for individuals and/or small businesses
- (3) Portfolio management for investment companies
- (4) Portfolio management for businesses or institutional *clients* (other than investment companies)
- (5) Pension consulting services
- (6) Selection of other advisers
- (7) Publication of periodicals or newsletters
- (8) Security ratings or pricing services
- (9) Market timing services

If "yes," describe this other business on Section 6.B. of Schedule D.

YES NO

- (3) Do you sell products or provide services other than investment advice to your advisory clients?

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

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Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

Item 7 requires you to provide information about you and your *related persons*. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common *control* with you.

A. You have a *related person* that is a (check all that apply):

- (1) broker-dealer, municipal securities dealer, or government securities broker or dealer
- (2) investment company (including mutual funds)
- (3) other investment adviser (including financial planners)
- (4) futures commission merchant, commodity pool operator, or commodity trading advisor
- (5) banking or thrift institution
- (6) accountant or accounting firm
- (7) lawyer or law firm
- (8) insurance company or agency
- (9) pension consultant
- (10) real estate broker or dealer
- (11) sponsor or syndicator of limited partnerships

If you checked Item 7.A(3), you must list on Section 7.A. of Schedule D all your related persons that are investment advisers. If you checked Item 7.A(1), you may elect to list on Section 7.A. of Schedule D all your related persons that are broker-dealers. If you choose to list a related broker-dealer, the IARD will accept a single Form U-4 to register an investment adviser representative who also is a broker-dealer agent ("registered rep") of that related broker-dealer.

YES NO

- B. Are you or any *related person* a general partner in an *investment-related* limited partnership or manager of an *investment-related* limited liability company, or do you advise any other "private fund" as defined under SEC rule 203(b)(3)-1?

If "yes," for each limited partnership or limited liability company, or (if applicable) private fund, complete Section 7.B. of Schedule D. If, however, you are an SEC-registered adviser and you have related persons that are SEC-registered advisers who are the general

partners of limited partnerships or the managers of limited liability companies, you do not have to complete Section 7.B. of Schedule D with respect to those related advisers' limited partnerships or limited liability companies.

To use this alternative procedure, you must state in the Miscellaneous Section of Schedule D: (1) that you have related SEC-registered investment advisers that manage limited partnerships or limited liability companies that are not listed in Section 7.B. of your Schedule D; (2) that complete and accurate information about those limited partnerships or limited liability companies is available in Section 7.B. of Schedule D of the Form ADVs of your related SEC-registered advisers; and (3) whether your clients are solicited to invest in any of those limited partnerships or limited liability companies.

Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients'* transactions. Like Item 7, this information identifies areas in which conflicts of interest may occur between you and your *clients*.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*.

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Item 8 Participation or Interest in *Client* Transactions (Continued)

Proprietary Interest in *Client* Transactions

- | A. Do you or any <i>related person</i> : | Yes | No |
|---|----------------------------------|----------------------------------|
| (1) buy securities for yourself from advisory <i>clients</i> , or sell securities you own to advisory <i>clients</i> (principal transactions)? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory <i>clients</i> ? | <input checked="" type="radio"/> | <input type="radio"/> |
| (3) recommend securities (or other investment products) to advisory <i>clients</i> in which you or any <i>related person</i> has some other proprietary (ownership) interest (other than those mentioned in Items 8.A(1) or (2))? | <input checked="" type="radio"/> | <input checked="" type="radio"/> |

Sales Interest in *Client* Transactions

- | B. Do you or any <i>related person</i> : | Yes | No |
|--|----------------------------------|----------------------------------|
| (1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory <i>client</i> securities are sold to or bought from the brokerage customer (agency cross transactions)? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) recommend purchase of securities to advisory <i>clients</i> for which you or any <i>related person</i> serves as underwriter, general or managing partner, or purchaser representative? | <input checked="" type="radio"/> | <input checked="" type="radio"/> |
| (3) recommend purchase or sale of securities to advisory <i>clients</i> for which you or any <i>related person</i> has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? | <input type="radio"/> | <input checked="" type="radio"/> |

Investment or Brokerage Discretion

- | C. Do you or any <i>related person</i> have <i>discretionary authority</i> to determine the: | Yes | No |
|--|----------------------------------|-----------------------|
| (1) securities to be bought or sold for a <i>client's</i> account? | <input checked="" type="radio"/> | <input type="radio"/> |
| (2) amount of securities to be bought or sold for a <i>client's</i> account? | <input checked="" type="radio"/> | <input type="radio"/> |
| (3) broker or dealer to be used for a purchase or sale of securities for a <i>client's</i> account? | <input checked="" type="radio"/> | <input type="radio"/> |
| (4) commission rates to be paid to a broker or dealer for a <i>client's</i> securities transactions? | <input checked="" type="radio"/> | <input type="radio"/> |

FORM ADV

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Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

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Item 8 Participation or Interest in *Client* Transactions (Continued)

- | | | |
|--|----------------------------------|----------------------------------|
| D. Do you or any <i>related person</i> recommend brokers or dealers to <i>clients</i> ? | <input type="radio"/> | <input checked="" type="radio"/> |
| E. Do you or any <i>related person</i> receive research or other products or services other than execution from a broker-dealer or a third party in connection with <i>client</i> securities transactions? | <input checked="" type="radio"/> | <input type="radio"/> |
| F. Do you or any <i>related person</i> , directly or indirectly, compensate any <i>person</i> for <i>client</i> referrals? | <input type="radio"/> | <input checked="" type="radio"/> |

In responding to this Item 8.F., consider in your response all cash and non-cash compensation that you or a related person gave any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* assets. If you are registering or registered with the SEC and you deduct your advisory fees directly from your *clients'* accounts but you do not otherwise have *custody* of your *clients'* funds or securities, you may answer "no" to Item 9A.(1) and 9A.(2).

- | A. Do you have <i>custody</i> of any advisory <i>clients'</i> : | Yes | No |
|---|----------------------------------|----------------------------------|
| (1) cash or bank accounts? | <input checked="" type="radio"/> | <input type="radio"/> |
| (2) securities? | <input checked="" type="radio"/> | <input type="radio"/> |
| B. Do any of your <i>related persons</i> have <i>custody</i> of any of your advisory <i>clients'</i> : | | |
| (1) cash or bank accounts? | <input checked="" type="radio"/> | <input type="radio"/> |
| (2) securities? | <input checked="" type="radio"/> | <input type="radio"/> |
| C. If you answered "yes" to either Item 9.B(1) or 9.B(2), is that <i>related person</i> a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934? | <input type="radio"/> | <input checked="" type="radio"/> |

Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you.

If you are submitting an initial application, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating

information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application, you must complete Schedule C.

Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies?

YES NO

If yes, complete Section 10 of Schedule D.

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Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A(1), 11.A(2), 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

For "yes" answers to the following questions, complete a Criminal Action DRP:

A. In the past ten years, have you or any *advisory affiliate*:

YES NO

(1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?

(2) been *charged* with any *felony*?

If you are registered or registering with the SEC, you may limit your response to Item 11.A (2) to charges that are currently pending.

B. In the past ten years, have you or any *advisory affiliate*:

- (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
- (2) been *charged* with a *misdemeanor* listed in 11.B(1)?

If you are registered or registering with the SEC, you may limit your response to Item 11.B (2) to charges that are currently pending.

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Item 11 Disclosure Information (Continued)

For "yes" answers to the following questions, complete a Regulatory Action DRP:

- | | YES | NO |
|---|-----------------------|----------------------------------|
| C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever: | | |
| (1) <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of SEC or CFTC regulations or statutes? | <input type="radio"/> | <input checked="" type="radio"/> |
| (3) <i>found</i> you or any <i>advisory affiliate</i> to have been a cause of an <i>investment-related</i> business having its authorization to do business denied, suspended, revoked, or restricted? | <input type="radio"/> | <input checked="" type="radio"/> |
| (4) entered an <i>order</i> against you or any <i>advisory affiliate</i> in connection with <i>investment-related</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| (5) imposed a civil money penalty on you or any <i>advisory affiliate</i> , or <i>ordered</i> you or any <i>advisory affiliate</i> to cease and desist from any activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| | | |
| D. Has any other federal regulatory agency, any state regulatory agency, or any <i>foreign financial regulatory authority</i> : | | |
| (1) ever <i>found</i> you or any <i>advisory affiliate</i> to have made a false statement or omission, or been dishonest, unfair, or unethical? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) ever <i>found</i> you or any <i>advisory affiliate</i> to have been <i>involved</i> in a violation of <i>investment-related</i> regulations or statutes? | <input type="radio"/> | <input checked="" type="radio"/> |
| (3) ever <i>found</i> you or any <i>advisory affiliate</i> to have been a cause of an <i>investment-related</i> business having its authorization to do business denied, suspended, revoked, or restricted? | <input type="radio"/> | <input checked="" type="radio"/> |
| (4) in the past ten years, entered an <i>order</i> against you or any <i>advisory affiliate</i> in connection with an <i>investment-related</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| (5) ever denied, suspended, or revoked your or any <i>advisory affiliate's</i> registration or license, or otherwise prevented you or any <i>advisory affiliate</i> , by <i>order</i> , from associating with an <i>investment-related</i> business or restricted your or any <i>advisory affiliate's</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |

- E. Has any *self-regulatory organization* or commodities exchange ever:
- (1) *found* you or any *advisory affiliate* to have made a false statement or omission?
 - (2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)?
 - (3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
 - (4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities?

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Item 11 Disclosure Information (Continued)

- | | YES | NO |
|--|-----------------------|----------------------------------|
| F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any <i>advisory affiliate</i> ever been revoked or suspended? | <input type="radio"/> | <input checked="" type="radio"/> |
| G. Are you or any <i>advisory affiliate</i> now the subject of any regulatory <i>proceeding</i> that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.? | <input type="radio"/> | <input checked="" type="radio"/> |
| <u>For "yes" answers to the following questions, complete a Civil Judicial Action DRP:</u> | | |
| H. (1) Has any domestic or foreign court: | YES | NO |
| (a) in the past ten years, <i>enjoined</i> you or any <i>advisory affiliate</i> in connection with any <i>investment-related</i> activity? | <input type="radio"/> | <input checked="" type="radio"/> |
| (b) ever <i>found</i> that you or any <i>advisory affiliate</i> were <i>involved</i> in a violation of <i>investment-related</i> statutes or regulations? | <input type="radio"/> | <input checked="" type="radio"/> |
| (c) ever dismissed, pursuant to a settlement agreement, an <i>investment-related</i> civil action brought against you or any <i>advisory affiliate</i> by a state or <i>foreign financial regulatory authority</i> ? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) Are you or any <i>advisory affiliate</i> now the subject of any civil <i>proceeding</i> that could result in a "yes" answer to any part of Item 11.H(1)? | <input type="radio"/> | <input checked="" type="radio"/> |

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F(2)(c) that you have assets under management of less than \$25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

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Item 12 Small Businesses (Continued)

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- Control means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to control the other *person*.

- | | YES | NO |
|---|-----------------------|-----------------------|
| A. Did you have total assets of \$5 million or more on the last day of your most recent fiscal year? | <input type="radio"/> | <input type="radio"/> |
| <i>If "yes," you do not need to answer Items 12.B. and 12.C.</i> | | |
| B. Do you: | | |
| (1) <i>control</i> another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year? | <input type="radio"/> | <input type="radio"/> |
| (2) <i>control</i> another <i>person</i> (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? | <input type="radio"/> | <input type="radio"/> |
| C. Are you: | | |
| (1) <i>controlled</i> by or under common <i>control</i> with another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year? | <input type="radio"/> | <input type="radio"/> |
| (2) <i>controlled</i> by or under common <i>control</i> with another <i>person</i> (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year? | <input type="radio"/> | <input type="radio"/> |

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UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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CRD Number: [REDACTED]

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You must complete this Part 1B only if you are applying for registration, or are registered, as an investment adviser with any of the *state securities authorities*.

Part 1B Item 1 - State Registration

Complete this Item 1 if you are submitting an initial application for state registration or requesting additional state registration(s). Check the boxes next to the states to which you are submitting this application. If you are already registered with at least one state and are applying for registration with an additional state or states, check the boxes next to the states in which you are applying for registration. Do not check the boxes next to the states in which you are currently registered or where you have an application for registration pending.

<input type="checkbox"/> AL	<input type="checkbox"/> ID	<input type="checkbox"/> MO	<input type="checkbox"/> PA
<input type="checkbox"/> AK	<input type="checkbox"/> IL	<input type="checkbox"/> MT	<input type="checkbox"/> PR
<input type="checkbox"/> AZ	<input type="checkbox"/> IN	<input type="checkbox"/> NE	<input type="checkbox"/> RI
<input type="checkbox"/> AR	<input type="checkbox"/> IA	<input type="checkbox"/> NV	<input type="checkbox"/> SC
<input type="checkbox"/> CA	<input type="checkbox"/> KS	<input type="checkbox"/> NH	<input type="checkbox"/> SD
<input type="checkbox"/> CO	<input type="checkbox"/> KY	<input type="checkbox"/> NJ	<input type="checkbox"/> TN
<input type="checkbox"/> CT	<input type="checkbox"/> LA	<input type="checkbox"/> NM	<input type="checkbox"/> TX
<input type="checkbox"/> DE	<input type="checkbox"/> ME	<input type="checkbox"/> NY	<input type="checkbox"/> UT
<input type="checkbox"/> DC	<input type="checkbox"/> MD	<input type="checkbox"/> NC	<input type="checkbox"/> VT
<input type="checkbox"/> FL	<input type="checkbox"/> MA	<input type="checkbox"/> ND	<input type="checkbox"/> VI
<input type="checkbox"/> GA	<input type="checkbox"/> MI	<input type="checkbox"/> OH	<input type="checkbox"/> VA
<input type="checkbox"/> GU	<input type="checkbox"/> MN	<input type="checkbox"/> OK	<input type="checkbox"/> WA
<input type="checkbox"/> HI	<input type="checkbox"/> MS	<input type="checkbox"/> OR	<input type="checkbox"/> WV
			<input type="checkbox"/> WI

Part 1B Item 2 - Additional Information

A. Person responsible for supervision and compliance:

Name:

Title:

Telephone:

Fax:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

Email address, if available:

If this address is a private residence, check this box:

B. Bond/Capital Information, if required by your *home state*.

(1) Name of Issuing Insurance Company:

(2) Amount of Bond:
\$.00

(3) Bond Policy Number:

(4) If required by your home state, are you in compliance with your home state's minimum capital requirements?

Yes No

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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Part 1B Item 2 - Additional Information (Continued)

	Yes	No
For "yes" answers to the following question, complete a Bond DRP.		
C. Has a bonding company ever denied, paid out on, or revoked a bond for you?	<input type="radio"/>	<input type="radio"/>
For "yes" answers to the following question, complete a Judgment/Lien DRP:		
D. Do you have any unsatisfied judgments or liens against you?	<input type="radio"/>	<input type="radio"/>
For "yes" answers to the following questions, complete an Arbitration DRP:		
E. Are you, any <i>advisory affiliate</i> , or any <i>management person</i> currently the subject of, or have you, any <i>advisory affiliate</i> , or any <i>management person</i> been the subject of, an arbitration claim alleging damages in excess of \$2,500, involving any of the following:		
(1) any investment or an <i>investment-related</i> business of activity?	<input type="radio"/>	<input type="radio"/>
(2) fraud, false statement, or omission?	<input type="radio"/>	<input type="radio"/>
(3) theft, embezzlement, or other wrongful taking of property?	<input type="radio"/>	<input type="radio"/>
(4) bribery, forgery, counterfeiting, or extortion?	<input type="radio"/>	<input type="radio"/>
(5) dishonest, unfair, or unethical practices?	<input type="radio"/>	<input type="radio"/>
For "yes" answers to the following questions, complete a Civil Judicial Action DRP:		
F. Are you, any <i>advisory affiliate</i> , or any <i>management person</i> currently subject to, or have you, any <i>advisory affiliate</i> , or any <i>management person</i> been found liable in, a civil, <i>self-regulatory organization</i> , or administrative <i>proceeding</i> involving any of the following:		
(1) an investment or <i>investment-related</i> business or activity?	<input type="radio"/>	<input type="radio"/>
(2) fraud, false statement, or omission?	<input type="radio"/>	<input type="radio"/>
(3) theft, embezzlement, or other wrongful taking of property?	<input type="radio"/>	<input type="radio"/>
(4) bribery, forgery, counterfeiting, or extortion?	<input type="radio"/>	<input type="radio"/>
(5) dishonest, unfair, or unethical practices?	<input type="radio"/>	<input type="radio"/>
G. Other Business Activities		
(1) You are actively engaged in business as a(n) (check all that apply):		
<input type="checkbox"/> Attorney		
<input type="checkbox"/> Certified Public Accountant		
<input type="checkbox"/> Tax Preparer		

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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Part 1B Item 2 - Additional Information (Continued)

(2) If you are actively engaged in any business other than those listed in Item 6.A of Part 1A or Item 2.G(1) of Part 1B, describe the business and the approximate amount of time spent on that business:

H. If you provide financial planning services, the investments made based on those services at the end of your last fiscal year totaled:

	Securities Investments	Non-Securities Investments
Under \$100,000	<input type="radio"/>	<input type="radio"/>
\$100,001 to \$500,000	<input type="radio"/>	<input type="radio"/>
\$500,001 to \$1,000,000	<input type="radio"/>	<input type="radio"/>
\$1,000,001 to \$2,500,000	<input type="radio"/>	<input type="radio"/>
\$2,500,001 to \$5,000,000	<input type="radio"/>	<input type="radio"/>
More than \$5,000,000	<input type="radio"/>	<input type="radio"/>

If securities investments are over \$5,000,000, how much? (round to the nearest \$1,000,000)

If non-securities investments are over \$5,000,000, how much? (round to the nearest \$1,000,000)

I. *Custody*

- | | Yes | No |
|--|-----------------------|-----------------------|
| (1) Do you withdraw advisory fees directly from your <i>clients'</i> accounts? If you answered "yes", respond to the following: | <input type="radio"/> | <input type="radio"/> |
| (a) Do you send a copy of your invoice to the custodian or trustee at the same time that you send a copy to the <i>client</i> ? | <input type="radio"/> | <input type="radio"/> |
| (b) Does the custodian send quarterly statements to your <i>clients</i> showing all disbursements for the custodian account, including the amount of the advisory fees? | <input type="radio"/> | <input type="radio"/> |
| (c) Do your <i>clients</i> provide written authorization permitting you to be paid directly for their accounts held by the custodian or trustee? | <input type="radio"/> | <input type="radio"/> |
| (2) Do you act as a general partner for any partnership or trustee for any trust in which your advisory <i>clients</i> are either partners of the partnership or beneficiaries of the trust? If you answered "yes", respond to the following: | <input type="radio"/> | <input type="radio"/> |
| (a) As the general partner of a partnership, have you engaged an attorney or an independent certified public accountant to provide authority permitting each direct payment or any transfer of funds or securities from the partnership account? | <input type="radio"/> | <input type="radio"/> |
| (3) Do you require the prepayment of fees of more than \$500 per <i>client</i> and for six months or more in advance? | <input type="radio"/> | <input type="radio"/> |

FORM ADV**UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

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Part 1B Item 2 - Additional Information (Continued)

	Yes	No
J. If you are organized as a sole proprietorship, please answer the following:		
(1) (a) Have you passed, on or after January 1, 2000, the Series 65 examination?	<input type="radio"/>	<input type="radio"/>
(b) Have you passed, on or after January 1, 2000, the Series 66 examination and also passed, at any time, the Series 7 examination?	<input type="radio"/>	<input type="radio"/>
(2) (a) Do you have any investment advisory professional designations? <i>If "no", you do not need to answer Item 2.J(2)(b).</i>	<input type="radio"/>	<input type="radio"/>
(b) I have earned and I am in good standing with the organization that issued the following credential:		
<input type="checkbox"/> Certified Financial Planner ("CFP")		
<input type="checkbox"/> Chartered Financial Analyst ("CFA")		
<input type="checkbox"/> Chartered Financial Consultant ("ChFC")		
<input type="checkbox"/> Chartered Investment Counselor ("CIC")		
<input type="checkbox"/> Personal Financial Specialist ("PFS")		
<input type="checkbox"/> None of the above		
(3) Your Social Security Number:		

FORM ADV**UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

ADV-Annual Amendment, Part 2

Rev. 02/2005

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Amend, retire or file new brochures:

FORM ADV**UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

ADV - Annual Amendment, SCHEDULE A

Rev. 02/2005

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Form ADV, Schedule A**Direct Owners and Executive Officers**

- Complete Schedule A only if you are submitting an initial application. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
- Direct Owners and Executive Officers. List below the names of:

(a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer(Chief Compliance Officer is required and cannot be more than one individual), director, and any other individuals with similar status or functions;

(b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

(c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;

(d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and

(e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.

3. Do you have any indirect owners to be reported on Schedule B? Yes No

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.

5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are:
 NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
 A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15 (d) of the Exchange Act.

(c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
DBCM PARTNERS LLC	DE	MANAGING MEMBER	11/2005	NA	Y	N	██████████

HADLOCK, MARK, GRABAN	I	CHIEF COMPLIANCE OFFICER	11/2005	NA	Y N	N	██████
LOWETH, CHAD, ROBERT	I	CHIEF OPERATING OFFICER	06/2005	NA	Y	N	██████
HIGGINS, TIMOTHY, MICHAEL	I	TREASURER CHIEF FINANCIAL OFFICER	08/2005 01/2007	NA	Y N	N	██████
DIAMONDBACK CAPITAL PARTNERS, L.P.	DE	NON- MANAGING MEMBER	11/2005	E	N	N	██████████
HARARY, JOEL, T	I	GENERAL COUNSEL	08/2007	NA	N	N	██████
SCHIMEL, RICHARD, HARRIS	I	CO-CHIEF INVESTMENT OFFICER	07/2005	NA	Y	N	██████
SAPANSKI, LAWRENCE, JOSEPH	I	CO-CHIEF INVESTMENT OFFICER	07/2005	NA	Y	N	██████

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: 1 ████████

ADV - Annual Amendment, SCHEDULE B

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Form ADV, Schedule B

Indirect Owners

1. Complete Schedule B only if you are submitting an initial application. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.

2. Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:

(a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

(b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

(c) in the case of an owner that is a trust, the trust and each trustee; and

- (d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.
- 3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.
- 4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.
- 5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
- 6. Ownership codes are:
 - C - 25% but less than 50%
 - D - 50% but less than 75%
 - E - 75% or more
 - F - Other (general partner, trustee, or elected manager)
- 7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
 - (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15 (d) of the Exchange Act.
 - (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
SCHIMEL, RICHARD, HARRIS	I	DIAMONDBACK CAPITAL PARTNERS, L.P.	PARTNER LIMITED PARTNER	11/2005	C	Y	N	██████████
SAPANSKI, LAWRENCE, JOSEPH	I	DIAMONDBACK CAPITAL PARTNERS, L.P.	PARTNER LIMITED PARTNER	11/2005	C	Y	N	██████████
LOWETH, CHAD, ROBERT	I	DIAMONDBACK CAPITAL PARTNERS, L.P.	PARTNER LIMITED PARTNER	11/2005	C	Y	N	██████████
PETRELLA, LARRY, CRAIG	I	DIAMONDBACK CAPITAL PARTNERS, L.P.	PARTNER LIMITED PARTNER	11/2005	F	N	N	██████████
WADE, PETER	I	DIAMONDBACK CAPITAL PARTNERS, L.P.	LIMITED PARTNER	01/2006	F	N	N	██████████

**FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: ██████████

ADV - Annual Amendment, SCHEDULE C

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Form ADV, Schedule C

Amendments to Schedules A and B

1. Use Schedule C only to amend information requested on either Schedule A or Schedule B. Refer to Schedule A and Schedule B for specific instructions for completing this Schedule C. Complete each column.

2. In the Type of Amendment column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are:
 NA - less than 5% C - 25% but less than 50% G - Other (general partner, trustee, or elected member)
 A - 5% but less than 10% D - 50% but less than 75%
 B - 10% but less than 25% E - 75% or more

4. List below all changes to Schedule A (Direct Owners and Executive Officers):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amendment	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
HADLOCK, MARK, GRABAN	I	C	CHIEF COMPLIANCE OFFICER	11/2005	NA	N	N	██████████
HIGGINS, TIMOTHY, MICHAEL	I	C	CHIEF FINANCIAL OFFICER	01/2007	NA	N	N	██████████
HARARY, JOEL, T	I	A	GENERAL COUNSEL	08/2007	NA	N	N	██████████
SCHIMEL, RICHARD, HARRIS	I	A	CO-CHIEF INVESTMENT OFFICER	07/2005	NA	Y	N	██████████
SAPANSKI, LAWRENCE, JOSEPH	I	A	CO-CHIEF INVESTMENT OFFICER	07/2005	NA	Y	N	██████████

5. List below all changes to Schedule B (Indirect Owners):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amendment	Entity in Which Interest is Owned	Status	Date Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
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SCHIMEL, RICHARD, HARRIS	I	C	DIAMONDBACK CAPITAL PARTNERS, L.P.	LIMITED PARTNER	11/2005	C	Y	N	██████████
SAPANSKI, LAWRENCE, JOSEPH	I	C	DIAMONDBACK CAPITAL PARTNERS, L.P.	LIMITED PARTNER	11/2005	C	Y	N	██████████
LOWETH, CHAD, ROBERT	I	C	DIAMONDBACK CAPITAL PARTNERS, L.P.	LIMITED PARTNER	11/2005	C	Y	N	██████████
PETRELLA, LARRY, CRAIG	I	D	DIAMONDBACK CAPITAL PARTNERS, L.P.	LIMITED PARTNER	11/2005	F	N	N	██████████
WADE, PETER	I	D	DIAMONDBACK CAPITAL PARTNERS, L.P.	LIMITED PARTNER	01/2006	F	N	N	██████████

**FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: ██████████

ADV - Annual Amendment, SCHEDULE D Page 1

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Form ADV, Schedule D Page 1

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 1.B. Other Business Names

List your other business names and the jurisdictions in which you use them. You must complete a separate Schedule D for each business name.

No Information Filed

Section 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Page 1 for each location. If you are applying for registration, or are registered, only with the SEC, list only the largest five (in terms of numbers of *employees*).

Number and Street 1:
DIAMONDBACK ADVISORS NY, LLC

Number and Street 2:
810 7TH AVENUE, 37TH FLOOR

City:	State:	Country:	ZIP+4/Postal Code:
NEW YORK	NY	USA	10019

If this address is a private residence, check this box:

Telephone Number at this location:	Facsimile number at this location:
646-478-2200	

Section 1.I. World Wide Web Site Addresses

List your World Wide Web site addresses. You must complete a separate Schedule D for each World Wide Web site address.

No Information Filed

Section 1.K. Locations of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D Page 1 for each location.

Name of entity where books and records are kept:

MORGAN STANLEY FUND SERVICES

Number and Street 1:

2000 WESTCHESTER AVENUE

Number and Street 2:

City:

PURCHASE

State:

NY

Country:

USA

ZIP+4/Postal Code:

10577

If this address is a private residence, check this box:

Telephone Number:

914-225-4957

Facsimile number:

212-507-5504

This is (check one):

- one of your branch offices or affiliates.
 a third-party unaffiliated recordkeeper.
 other.

Briefly describe the books and records kept at this location.

~~BOOKS AND RECORDS INCLUDE THOSE DOCUMENTS PERTAINING TO MIDDLE OFFICE AND ACCOUNTING SUPPORT; PORTFOLIO RECONCILIATION AND PRICING; AND INVESTOR DOCUMENTATION INCLUDING ALL SUITABILITY REVIEWS AND COMPLIANCE CHECKS TO PROVIDE FINAL AUTHORITY ON ADMISSIBILITY OF INVESTORS.~~

AS FUND ADMINISTRATOR, MORGAN STANLEY FUND SERVICES MAINTAINS CERTAIN BOOKS AND RECORDS INCLUDING THOSE DOCUMENTS PERTAINING TO MIDDLE OFFICE AND ACCOUNTING SUPPORT; PORTFOLIO RECONCILIATION AND PRICING; AND INVESTOR DOCUMENTATION INCLUDING SUITABILITY REVIEWS AND COMPLIANCE CHECKS TO PROVIDE FINAL AUTHORITY ON ADMISSIBILITY OF INVESTORS.

Name of entity where books and records are kept:

FRONTBRIDGE ENTERPRISE MESSAGE MANAGEMENT

Number and Street 1:

4640 ADMIRALITY WAY

C/O MICROSOFT

Number and Street 2:

ONE MICROSOFT WAY

City:	State:	Country:	ZIP+4/Postal Code:
MARINA DEL REY	CA	USA	90292
REDMOND	WA		98052

If this address is a private residence, check this box:

Telephone Number:

~~877-301-8232~~

866-291-7726

Facsimile number:

~~310-301-6032~~

This is (check one):

- one of your branch offices or affiliates.
 a third-party unaffiliated recordkeeper.
 other.

Briefly describe the books and records kept at this location.

ARCHIVING OF ALL ELECTRONIC COMMUNICATIONS SUCH AS E-MAIL AND INSTANT MESSAGING.

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: XXXXXXXXXX

ADV - Annual Amendment, SCHEDULE D, Page 2

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Form ADV, Schedule D Page 2

Use this Schedule D Page 2 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 1.L. Registration with Foreign Financial Regulatory Authorities

List the name, in English, of each *foreign financial regulatory authority* and country with which you are registered. You must complete a separate Schedule D Page 2 for each *foreign financial regulatory authority* with whom you are registered.

No Information Filed

Section 2.A(7) Affiliated Adviser

If you are relying on the exemption in rule 203A-2(c) from the prohibition on registration because you *control*, are *controlled by*, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser

CRD Number of Registered Investment Adviser (if any)

SEC Number of Registered Investment Adviser

801-

Section 2.A(8) Newly Formed Adviser

If you are relying on rule 203A-2(d), the newly formed adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

- I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.
- I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

Section 2.A(9) Multi-State Adviser

If you are relying on rule 203A-2(e), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

- I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 30 or more states to register as an investment adviser with the securities authorities in those states.
- I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 25 states to register as an investment adviser with the securities authorities of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

- Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 25 states to register as an investment adviser with the securities authorities in those states.

FORM ADV**UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION****Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC****CRD Number:** XXXXXXXXXX**ADV - Annual Amendment, SCHEDULE D, Page 3****Rev. 02/2005****3/18/2008 4:50:17 PM****Form ADV, Schedule D Page 3**

Use this Schedule D Page 3 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 2.A(11) SEC Exemptive Order

No Information Filed

Section 4 Successions

Complete the following information if you are succeeding to the business of a currently-registered investment adviser. If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Page 3 for each acquired firm. See Part 1A Instruction 4.

No Information Filed

Section 5.I(2) Wrap Fee Programs

If you are a portfolio manager for one or more *wrap fee programs*, list the name of each program and its *sponsor*. You must complete a separate Schedule D Page 3 for each *wrap fee program* for which you are a portfolio manager.

No Information Filed

Section 6.B. Description of Primary Business

No Information Filed

Section 7.A. Affiliated Investment Advisers and Broker-Dealers

You MUST complete the following information for each investment adviser with whom you are affiliated. You MAY complete the following information for each broker-dealer with whom you are affiliated. You must complete a separate Schedule D Page 3 for each listed affiliate.

Legal Name of Affiliate:
DIAMONDBACK ADVISORS CT, LLC

Primary Business Name of Affiliate:
DIAMONDBACK ADVISORS CT, LLC

Affiliate is (check only one box):

- Investment Adviser
- Broker - Dealer
- Dual (Investment Adviser and Broker-Dealer)

Affiliated Investment Adviser's SEC File Number (if any)
801-

Affiliate's CRD Number (if any):

Legal Name of Affiliate:
DIAMONDBACK ADVISORS NY, LLC

Primary Business Name of Affiliate:
DIAMONDBACK ADVISORS NY, LLC

Affiliate is (check only one box):

- Investment Adviser
- Broker - Dealer
- Dual (Investment Adviser and Broker-Dealer)

Affiliated Investment Adviser's SEC File Number (if any)
801-

Affiliate's CRD Number (if any):

Legal Name of Affiliate:
DIAMONDBACK CAPITAL, LLC

Primary Business Name of Affiliate:
DIAMONDBACK CAPITAL, LLC

Affiliate is (check only one box):

- Investment Adviser
- Broker - Dealer
- Dual (Investment Adviser and Broker-Dealer)

Affiliated Investment Adviser's SEC File Number (if any)
801-

Affiliate's CRD Number (if any):

**FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: [REDACTED]

ADV - Annual Amendment, SCHEDULE D, Page 4

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Form ADV, Schedule D Page 4

Use this Schedule D Page 4 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 7.B. Limited Partnership Participation or Other Private Fund Participation

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a *related person* is a general partner, each limited liability company for which you or a *related person* is a manager, and each other private fund that you advise.

Name of Limited Partnership, Limited Liability Company, or other Private Fund:

DIAMONDBACK PARTNERS, L.P.

Name of General Partner or Manager:

~~DIAMONDBACK PARTNERS, LLC~~

DIAMONDBACK CAPITAL, LLC

Yes No

If you are registered or registering with the SEC, is this a "private fund" as defined under SEC rule 203(b)(3)-1?

Are your *clients* solicited to invest in the limited partnership, limited liability company, or other private fund?

Approximately what percentage of your *clients* have invested in this limited partnership, limited liability company, or other private fund?

50

0%

Minimum investment commitment required of a limited partner, member, or other investor:

\$ 5000000

Current value of the total assets of the limited partnership, limited liability company, or other private fund:

\$ 276417495

551515542

Name of Limited Partnership, Limited Liability Company, or other Private Fund:

DIAMONDBACK OFFSHORE FUND, LTD

Name of General Partner or Manager:

DIAMONDBACK CAPITAL MANAGEMENT, LLC

Yes No

If you are registered or registering with the SEC, is this a "private fund" as defined under SEC rule 203(b)(3)-1?

Are your *clients* solicited to invest in the limited partnership, limited liability company, or other private fund?

Approximately what percentage of your *clients* have invested in this limited partnership, limited liability company, or other private fund?

50

0%

Minimum investment commitment required of a limited partner, member, or other investor:

\$ 5000000

Current value of the total assets of the limited partnership, limited liability company, or other private fund:
\$ 855908030

Section 10 Control Persons

You must complete a separate Schedule D Page 4 for each *control person* not named in Item 1.A. or Schedules A, B, or C that directly or indirectly *controls* your management or policies.

No Information Filed

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: [REDACTED]

ADV - Annual Amendment, SCHEDULE D, Page 5

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Form ADV, Schedule D Page 5

Use this Schedule D Page 5 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

FORM ADV UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: DIAMONDBACK CAPITAL MANAGEMENT, LLC

CRD Number: [REDACTED]

ADV - Annual Amendment, DRP Pages

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CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

No Information Filed

Bond DRPs

No Information Filed

Judgment/Lien DRPs

No Information Filed

Arbitration DRPs

No Information Filed

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **DIAMONDBACK CAPITAL MANAGEMENT, LLC**CRD Number: XXXXXXXXXX

ADV - Annual Amendment, Execution Pages

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DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order instituting proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) *is founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:	Date: MM/DD/YYYY
MARK HADLOCK	02/26/2007
MARK G. HADLOCK	03/18/2008
Printed Name:	Title:
MARK HADLOCK	CHIEF COMPLIANCE OFFICER
MARK G. HADLOCK	

Adviser CRD Number:
[REDACTED]

NON-RESIDENT INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order instituting proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. Non-Resident Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by

law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: _____ Date: MM/DD/YYYY

Printed Name: _____ Title: _____

Adviser CRD Number:
138137

State Registered Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for state registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the legally designated officers and their successors, of the state in which you maintain your *principal office and place of business* and any other state in which you are applying for registration or amending your registration, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order instituting proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are applying for registration or amending your registration.

2. State-Registered Investment Adviser Affidavit

If you are subject to state regulation, by signing this Form ADV, you represent that, you are in compliance with the registration requirements of the state in which you maintain your principal place of business and are in compliance with the bonding, capital, and recordkeeping requirements of that state.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature _____ Date MM/DD/YYYY

CRD Number

138137

Printed Name

Title

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